

TAAAR



February 14, 2003
Volume 29, Number 2

RILEY C. DARNELL
Secretary of State

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

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PREFACE

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

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

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

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

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

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

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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 8.25%.

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 March 2003 is 8.98 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 calculated rate is 4.98 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 December 2002. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-01	Jan 2, 2003	1200 Health Office of the Commissioner	Emergency Rules	Amendments	<i>Chapter 1200-24-4 Reimbursement of Health Care Provider Costs</i> 1200-24-4-.03 General Provisions	Nick Aemisegger OGC 26 th Fl TN T Twr 312 8 th Ave N Nashville TN 37247-0120 615-41-611	Jan 2, 2003 through June 16, 2003
01-02	Jan 2, 2003	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	1200-13-12-.08 Provider	George Woods Bureau of TennCare 729 Church St, Nashville, TN 37247-6501 615) 741-0145	Jan 2, 2003 through June 16 2003
01-03	Jan 2, 2003	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	1200-13-13-.08 Provider	George Woods Bureau of TennCare 729 Church St, Nashville, TN 37247-6501 615) 741-0145	Jan 2, 2003 through June 16, 2003
01-04	Jan 2, 2003	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	1200-13-14-.08 Provider	George Woods Bureau of TennCare 729 Church St, Nashville, TN 37247-6501 615) 741-0145	Jan 2, 2003 through June 16, 2003
01-05	Jan 3, 2003	0800 Labor and Workforce Workers' Compensation	Proposed Rules	Repeals	<i>Chapter 0800-2-1 General Rules of the Workers' Compensation Program</i> 0800-2-1-.04 Failure to Provide Coverage <i>Chapter 0800-2-10 Civil Appeal Procedure(Entire Chapter)</i>	Peter B. Halverstadt Labor and Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy. Nashville, TN 37243-0661 615-532-2403	May 30, 2003
01-06	Jan 3, 2003	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-5 Rules and Regulations for Fishing</i> 1660-1-5-.03	Sheryl Holtam, Attorney TN Wildlife Resources Agency P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	March 19, 2003

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-09	Jan 16, 2003	1150 Occupational and Physical Therapy Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 1150-1 General Rules Governing the Practice of Physical Therapy</i> 1150-1-.06 Fees 1150-1-.09 Renewal of License 1150-1-.11 Retirement and Reactivation of License 1150-1-.12 Continuing Competence	Nicole Armstrong OGC 26 th Fl TN Twr 312 8 th Ave. N Nashville, TN 37247-0120 615-741-1611	April 1, 2003
01-10	Jan 17, 2003	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	New Rule Amendments	<i>Chapter 1200-3-6 Non-Process Emission Standards</i> 1200-3-6-.06 Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999 <i>Chapter 1200-3-2 Definitions</i> 1200-3-2-.01 General Definitions <i>Chapter 1200-3-4 Open Burning</i> 1200-3-4-.03 Open Burning Prohibited	Mr. John Patton Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville, TN 37243-1531 (615) 532-0604	April 2, 2003
01-13	Jan 24, 2003	1200 Health Board for Licensing Health Care Facilities Division of Health Care Facilities	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-8-34 Standards for Home Care Organizations Providing Professional Support Services</i> 1200-8-34-.01 Definitions 1200-8-34-.02 Licensing Procedures 1200-8-34-.03 Disciplinary Procedures 1200-8-34-.04 Administration 1200-8-34-.05 Admissions, Discharges, and Transfers 1200-8-34-.06 Basic Agency Functions 1200-8-34-.07 Reserved	Nick Aemisegger Health OGC 26 th Fl, TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-532-7173	April 9, 2003

ANNOUNCEMENTS

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-13, cont.					1200-8-34-.08 Reserved 1200-8-34-.09 Reserved 1200-8-34-.10 Infectious and Hazardous Waste 1200-8-34-.11 Records and Reports 1200-8-34-.12 Consumer Rights 1200-8-34-.13 Reserved 1200-8-34-.14 Reserved		
01-14	Jan 24, 2003	0690 General Services	Proposed Rules	New Rules	<i>Chapter 0690-6-1 Purchase of Materials, Supplies, Equipment and Services Limitations of Liability</i> 0690-6-1-.01 Policy Statement and Scope of Rules 0690-6-1-.02 Approval for Limitation of Liability	George St 3rd Fl TN Twr 312 8th Ave N Nashville TN 37243 615-741-1035	May 30, 2003
01-15	Jan 24, 2003	0020 Accountancy	Rulemaking Hearing Rules	Amendments	<i>Chapter 0020-1 Board of Accountancy, Licensing and Registration Requirements</i> 0020-1-.06 Examinations	Connaught O'Connor OGC TN Twr 25 th Fl 312 8th Ave N Nashville, TN 37243 615-741-3072	April 9, 2003
01-16	Jan 31, 2003	1370 Communications Disorders and Sciences	Rulemaking Hearing Rules	Amendments	1370-1-.07 Application Review 1370-1-.10 Clinical Fellowships and Supervision 1370-1-.12 Continuing Education	Kristi Faulkner OGC 26 th Fl 312 Eighth Avenue North Nashville, TN 37243	April 16, 2003
01-17	Jan 31, 2003	0260 Chiropractic Examiners	Rulemaking Hearing Rules	Amendments	0260-3-.03 Necessity of Certification 0260-3-.04 Qualifications of Certification 0260-3-.05 Procedures for Certification 0260-3-.08 Examination 0260-3-.12 Continuing Education	Robert J. Kraemer OGC 26 th Fl 312 8 th Avenue North Nashville, TN 37243	April 16, 2003

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-17, cont.					0260-5-.01 Definitions 0260-5-.03 Necessity of Certification 0260-5-.04 Qualifications for Certifications 0260-5-.05 Procedures for Certification 0260-5-.08 Examination 0260-5-.12 Continuing Education		
01-18	Jan. 31, 2003	1365 Bd. Of Social Worker Certification	Rulemaking Hearing Rules	Amendments	1365-1-.15 Disciplinary Actions, Civil Penalties and Declaratory Orders	Carrie Archie OGC 26 th Fl 312 8 th Ave N Nashville, Tn 37243	April 16, 2003
01-19	Jan 31, 2003	1200 Health Medical Laboratory Board	Rulemaking Hearing Rules	Amendment	1200-6-1-.22 Qualifications, Responsibilities and Duties of Testing Personnel	Robert J. Kraemer OGC 26 th Fl 312 8 th Avenue North Nashville,. TN 37243	April 16, 2003
01-20	Jan. 31, 2003	1240 Human Services Family Assistance	Rulemaking Hearing Rules	Amendments	1240-1-3-.43 Food Stamp Program Work Requirements	Phyllis Simpson Human Services OGC 26 th Fl 312 8 th Avenue North Nashville, TN 37243	April 16, 2003
01-21	Jan 31, 2002	1200 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	1200-1-13-.13 List of Inactive Hazardous Substances Sites Road Battery Site	Robert L. Powell Division of Superfund 4 th Fl Annex, L & C Building Nashville, TN 37243	April 16, 2003
01-22	Jan 31, 2003	1200 Health Bureau of Health Services	Proposed Rules	Amendments	<i>Chapter 1200-20-11 State Conrad J-1 Visa Waiver</i> 1200-20-11-.02 Definitions 1200-20-11-.04 Eligibility 1200-20-11-.05 Application Review, Approval, Denial 1200-20-11-.05 Application Review, Approval, Denial	Richard F. Russell OGC 26 th Fl TN Twr 312 8 th Ave N Nashville, TN 37247-0120 615-741-1611	May 30, 2003

SEQ	FILE DATE	DEPT. & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
01-23	Jan 29, 2003	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-15 Administrative Hearing Unit</i>	George Woods Bureau of TennCare 729 Church St Nashville, TN 37247-6501 615-741-0145	Jan 29, 2003 through July 13, 2003

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

Applications will be heard at the March 26, 2003 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 January 1, 2003. The review cycle includes a 60-day period of review by the Tennessee Department of Health or the Department of Mental Health and Developmental Disabilities. 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 Developmental Disabilities. 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
Erlanger Health System 975 East 3 rd Street Chattanooga Hamilton Co.), TN 37403 Martin S. McKay – (423)—778-3286 CN0210-100	The addition of a third magnetic resonance imaging (MRI) unit at the main campus. \$ 4,092,974.00
DeLozier Surgery Center 209 23 rd Avenue North Nashville (Davidson Co.), TN 37203 Brian White – (615)—565-9000 CN0211-114	The establishment of a single specialty ambulatory surgical treatment center (ASTC) with one (1) operating room and the initiation of outpatient plastic and reconstructive surgery. \$ 697,251.00
Kingsport Eye Surgery Center 999 Executive Park Boulevard, Suite 100 Kingsport (Sullivan Co.), TN 37660 John Wellborn – (615)—665-2022 CN0212-119	The establishment of an ambulatory surgical treatment center (ASTC) with two surgical procedure rooms, and the initiation of outpatient ophthalmic eye surgery services. The ASTC will be located in an existing professional building. \$ 2,075,210.00

NAME AND ADDRESS	DESCRIPTION
State of Franklin Healthcare Associates Outpatient Diagnostic Center 219 Princeton Road, Suite 101 Johnson City (Washington Co.), TN 37601 John Wellborn – (615)—665-2022	The establishment of an outpatient diagnostic center (ODC), the initiation of magnetic resonance imaging (MRI) services, the acquisition of a magnetic resonance imaging (MRI) scanner, and the provision of computed tomography (CT), ultrasound, echocardiography, mammography, nuclear medicine, and bone densitometry services. \$ 4,312,481.00
Tennessee Christian Medical Center 500 Hospital Drive Madison (Davidson Co.), TN 37115 John Wellborn – (615)—665-2022 CN0212-123	The discontinuance of obstetrical services at Tennessee Christian Medical Center. \$ 25,000.00
Southern Tennessee Medical Center 185 Hospital Road Winchester (Franklin Co.), TN 37398 John Wellborn – (615)—665-2022 CN02120124	The initiation of mobile Positron Emission Tomography (PET) services two days per month at the main hospital campus. \$ 251,892.00

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)
- 0620 - Finance and Administration - Bureau of TennCare - Emergency rules relating to the TennCare Medicaid Program, including, but not limited to, terminology, eligibility requirements, medical services covered by the program and appeal rights, Chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2003). Filed December 13, 2002; effective through May 27, 2003. (01-TennCare Medicaid Program, including, but not limited to, terminology, eligibility requirements, medical services covered by the program and appeal rights. (12-10)
- 0620 - Finance and Administration - Bureau of TennCare - Emergency rules relating to the TennCare Standard Program, including, but not limited to, terminology, eligibility requirements, medical services covered by the program and appeal rights, Chapter 1200-13-14 TennCare Standard, 1 T.A.R. (January 2003). Filed December 13, 2002; effective through May 27, 2003. (12-11)
- 1200 - Department of Health - Health and Licensure regulation - Emergency and Medical Services Division - Emergency rules covering procedures for administering chemical agent antidotes or epinephrine in emergency situations, chapter 1200-12-1 Procedures for Administering Chemical Agent Antidotes in Emergency Situations, 11 T.A.R. (October 2002) - Filed October 22, 2002; effective April 5, 2003. (10-26)

DEPARTMENT OF HEALTH - 1200 OFFICE OF THE COMMISSIONER

CHAPTER 1200-24-4 REIMBURSEMENT OF HEALTH CARE PROVIDER COSTS

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. § 4-5-208, I am promulgating emergency rules covering procedures for reimbursement of providers of health care services who contract with state agencies.

I have made a finding that there is an emergency creating a threat to the public welfare for the reasons set forth below:

The State of Tennessee, working in conjunction with the University of Tennessee Health Science Center, has established telemedicine units in five different Youth Development Centers. These telemedicine units have the technological capacity to allow specialists from the University of Tennessee, Memphis and the University of Tennessee Medical Group to perform remote evaluations and examinations – without leaving their offices in Memphis – on at-risk children located in different geographical regions throughout the State of Tennessee. These telemedicine units were established to improve access to, and the quality of, much needed specialty services for the benefit of at-risk children.

Although the telemedicine units are connected and fully operational, the Department of Children's Services (DCS) is unable to secure the long-term commitment of the specialists required to staff these units because of Rule 1200-24-4-.03, which limits the amount DCS can pay to health care contractors. Rule 1200-24-4-.03 was tied to Medicaid rates which were, at the time this rule was adopted, updated annually by the State of Tennessee. However, since the establishment of TennCare, these Medicaid rates have not been updated. As a result, Rule 1200-24-4-.03 requires DCS to reimburse health care providers at outdated 1993 Medicaid rates. In many cases, these rates are less than one-third of the prevailing Medicare reimbursement rates for the same services. Unless these rates are changed immediately, the telemedicine units will not be fully staffed, and many at-risk children will be deprived of the specialty services offered by this unique program. For copies of the entire text of the proposed amendments, contact: Gary Zelizer, Legislative Liaison, Office of the Commissioner, Third Floor - Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0101, (615) 532-6145.

Fredia S. Wadley, M.D.
Commissioner
Tennessee Department of Health

The text of the proposed amendment is as follows:

AMENDMENT

Rule 1200-24-4-.03, General Provisions, is amended by adding the following language after paragraph (1), so that, as amended, the new paragraph (2), including subparagraphs (a) – (d), shall read:

Rule 1200-24-4-.03 General Provisions.

- (2) Notwithstanding paragraph (1), above, providers of health care services who contract with the Department of Children's Services for the care of children in youth development centers, as defined in T.C.A. § 37-5-103, shall be reimbursed for those medical procedures as follows:
 - (a) Physicians and other medical professionals delivering services can be reimbursed by procedure codes up to the rate of one-hundred percent (100%) of the Physicians' Medicare Fee Schedule using the updated national conversion factor referenced in the Federal Register and updated October 31st of each year. Where the Department of Children's Services cannot procure a service at that rate, reimbursement at a higher rate can be made due to special circumstances, but only pursuant to a contract or departmental purchase authority approved by the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury.
 - (b) Acute care hospitals can be reimbursed up to one-hundred percent (100%) of the rate that Medicare pays hospitals for their inpatient hospital services at the predetermined rate for each discharge under the prospective payment system. Where the Department of Children's Services cannot procure a service at that rate, reimbursement at a higher rate can be made due to special

circumstances, but only pursuant to a contract or departmental purchase authority approved by the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury.

- (c) Inpatient acute psychiatric hospital days can be paid at a rate of one-hundred percent (100%) of the Medicare reasonable cost basis, subject to per discharge limits. Where the Department of Children's Services cannot procure a service at that rate, reimbursement at a higher rate can be made due to special circumstances, but only pursuant to a contract or departmental purchase authority approved by the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury.
- (d) With respect to subparagraphs (a), (b) and (c), above, physicians and other medical professionals, acute care hospitals and inpatient acute psychiatric hospitals must submit a claim for reimbursement to any existing third party payor and evidence of adjudication of that claim must be submitted to the Department of Children's Services before the agency will be responsible for reimbursement of health care services, supplies or equipment.

Authority: T.C.A. §§4-5-208 and 12-4-301.

The emergency rules set out herein were properly filed in the Department of State on the 2nd day of January, 2003, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 16th day of June, 2003. (01-01)

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PROPOSED RULES

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 17th day of March, 2003.

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

Rules of the Department of Finance and Administration is amended by adding Chapter 1200-13-15 Rules of the TennCare administrative Hearing Unit which shall read as follows:

CHAPTER 1200-13-15 ADMINISTRATIVE HEARING UNIT

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1200-13-15-.01	Definitions	1200-13-15-.15	Order of Proceedings
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1200-13-15-.07	Place	1200-13-15-.21	Notice of Right to Appeal the Initial Order
1200-13-15-.08	Commencement of Contested Case Proceedings	1200-13-15-.22	Notice of Right to Petition for Reconsideration of the Initial Order
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1200-13-15-.13	Rules of Evidence	1200-13-15-.27	Clerical Mistakes
1200-13-15-.14	Examination of Case File		

1200-13-15-.01 DEFINITIONS.

- (1) Administrative Hearing. A contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq., to allow an applicant for TennCare Standard to appeal an action by the agency or the agency's designee regarding all matters of eligibility for TennCare Standard. An evidentiary hearing held before an impartial hearing officer or administrative law judge, at TennCare's discretion, who renders an initial order pursuant to T.C.A. § 4-5-314.
- (2) Administrative Law Judge. An impartial employee or official of the Department of State Administrative Procedures Division who is licensed to practice law and authorized by law to conduct contested case proceedings pursuant to T.C.A. § 4-5-301.
- (3) Administrative Procedures Act. The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.
- (4) Agency. The Bureau of TennCare.
- (5) APA. The Administrative Procedures Act.
- (6) APD. The Department of State Administrative Procedures Division.
- (7) Appeal. The process of obtaining an administrative hearing as a result of an Agency action regarding matters affecting eligibility for TennCare Standard, or the process of obtaining review of an initial order by the Commissioner's Designee or judicial review of a final order.
- (8) Appellant. An individual who is dissatisfied with an Agency action regarding matters affecting eligibility for TennCare Standard and who requests an administrative hearing, or is dissatisfied with the results of an administrative hearing and requests review of an initial or final order.
- (9) Applicant. An individual who submits an application for TennCare Standard health coverage or the person who acts as an authorized representative for the applicant.
- (10) Burden of Proof. A preponderance of the evidence. The minimum evidentiary standard required in order to prevail in an administrative hearing.
- (11) Bureau. The Bureau of TennCare.
- (12) Bureau of TennCare. The administrative unit of TennCare which is responsible for the administration of TennCare, the program administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (13) Commissioner. The chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located.
- (14) Commissioner's Designee. A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for stay or reconsideration of final orders.
- (15) Contested Case Proceeding. A proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.

- (16) Department. The Tennessee Department of Finance and Administration.
- (17) Fair Hearing. An administrative hearing.
- (18) Findings of Fact. The factual findings following the administrative hearing, enumerated in the initial and/or final order, which includes a concise and explicit statement of the underlying facts of record to support the findings.
- (19) Final Order. The initial order becomes a final order without further notice if not appealed, or if the initial order is appealed pursuant to T.C.A. § 4-5-315, the Commissioner or Commissioner's Designee may render a final order. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included.
- (20) Hearing. An administrative hearing.
- (21) Hearing Officer. An impartial official of the Department of Finance and Administration or the Department of State Administrative Procedures Division who is designated by the Commissioner or his/her designated representative to conduct administrative hearings. The person so designated shall have no direct involvement in the action under consideration prior to the filing of the appeal.
- (22) Initial Order. The decision of the hearing officer or administrative law judge following an administrative hearing. The initial order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It shall include a statement of any circumstances under which the initial order may, without further notice, become a final order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included.
- (23) Notice of Hearing. The pleading filed with the TennCare Administrative Hearing Unit by the agency upon receipt of an appeal. It shall contain a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307 (b).
- (24) Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (25) Person. Any individual.
- (26) Petitioner. The party who initiated the contested case proceeding and who usually bears the burden of proof.
- (27) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as, a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (28) Respondent. The party who is responding to the action brought by the petitioner, usually the Agency.
- (29) TAHU. The TennCare Administrative Hearing Unit.

- (30) TennCare Administrative Hearing Unit. The office established within the Department of Finance and Administration to provide Hearing Officers for the purpose of conducting Administrative Hearings of appeals of agency actions regarding matters affecting eligibility under TennCare Standard.
- (31) TennCare Standard. That part of the TennCare Program which provides health coverage for Tennessee residents who:
- (a) Are uninsured, do not have access to group health insurance (either directly or indirectly through another family member), and whose income is less than the poverty level for which Federal and State appropriations are made available; or
 - (b) Are uninsured, do not have or have access to group health insurance (either directly or indirectly through another family member), and have proven that s/he meets the appropriate Medical Eligibility criteria for his/her circumstances; or
 - (c) Are uninsured children under age nineteen (19), whose family income is less than 200% poverty, who have access to insurance but have not purchased it, and who have been continuously enrolled in this category since December 31, 2001; or
 - (d) Had Medicare as of December 31, 2002 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of “uninsurable” in effect at that time. Effective January 1, 2003 these individuals are eligible only for the TennCare Standard pharmacy benefit package; or
 - (e) Were enrolled as dislocated workers on June 30, 2002, have not purchased other insurance, and have incomes that do not exceed the amount established for redetermination during the waiver transition period in rule 1200-13-14-.02(7).
- (32) TennCare Standard Enrollee (Enrollee). An individual covered under TennCare Standard.
- (33) TRCP. The Tennessee Rules of Civil Procedure.

1200-13-15-.02 SCOPE.

- (1) These rules shall govern all administrative hearings conducted for the purpose of determining TennCare Standard eligibility and related issues, and will be relied upon by hearing officers and administrative law judges conducting such hearings. Prior to determining TennCare Standard eligibility, an applicant’s TennCare Medicaid eligibility must be denied. TennCare Medicaid eligibility appeals shall be conducted by the Department of Human Services pursuant to /Chapter 1240-5 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) In any procedural situation that arises that is not specifically addressed by these rules, reference may be made to the following authorities in the order listed for guidance as to the proper procedure to follow: the Tennessee Uniform Administrative Procedures Act and the rules promulgated thereunder, and the Tennessee Rules of Civil Procedure.

1200-13-15-.03 AUTHORITY OF HEARING OFFICER.

- (1) The Commissioner has placed responsibility for administrative hearings in the TennCare Administrative Hearing Unit and the Department of State Administrative Procedures Division. The hearing officer or administrative law judge is vested with full authority to conduct the hearing process in accordance with these rules.
- (2) The hearing officer or administrative law judge shall have the authority to do the following:
 - (a) Schedule and conduct the hearing;
 - (b) Administer oaths;
 - (c) Issue subpoenas;
 - (d) Rule upon offers of proof;
 - (e) Regulate the course of the hearing;
 - (f) Write an initial order stating his/her decision; and
 - (g) Rule on petitions for reconsideration or stay of the initial order or final order.

1200-13-15-.04 SUBPOENAS FOR EVIDENCE AND WITNESSES.

The parties shall have the power in an administrative hearing to require the attendance of witnesses and the production of books, records, papers, or other tangible things as may be necessary and proper for the purpose of the administrative hearing. It shall be the responsibility of the hearing officer or administrative law judge to issue the subpoena, but it shall be the responsibility of the parties involved in the case to request the issuance of a subpoena. The hearing officer or administrative law judge at the request of any party shall issue signed subpoenas in blank. Parties shall complete and serve their own subpoenas. Subpoenas may be served at any place within the State by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

1200-13-15-.05 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings and any other materials required to be filed by a time certain as the result of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the TAHU or the APD, as designated, within the required time period.
- (2) Upon the involvement of either the TAHU or the APD in any contested case, all pleadings and other materials required to be filed or submitted prior to the administrative hearing shall be filed with the designated office, where they will be stamped with the date and hour of their receipt.
- (3) Petitions for review of an initial order and for reconsideration or stay of a final order may be filed with the agency or either the TAHU or the APD, as designated in the order.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1200-13-15-.12.

- (5) Copies of any and all materials filed with the agency or the TAHU or the APD in a contested case shall also be served upon all parties, or upon their counsel, and shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or by hand delivery.

1200-13-15-.06 TIME.

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- (2) When an act is required or allowed to be done at or within a specified time, the opposing party shall have the same amount of time to respond as the initiating party, and the hearing officer or administrative law judge may not permit the act to be done late.
- (3) Due to mandatory Federal Court timeframes, if an appellant requests a continuance the deadlines shall be extended by like period of time.

1200-13-15-.07 PLACE.

In the discretion of the hearing officer or administrative law judge, all or part of the administrative hearing, including any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

1200-13-15-.08 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

- (1) Commencement of Action. A contested case proceeding shall be commenced by appeal of an affected person from an agency action.
- (2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the agency.
- (3) Filing of Documents. When a contested case is commenced the agency shall provide the TAHU or the APD with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency concerning that particular case. Legible copies may be filed in lieu of originals.
- (4) Answer. The party may respond to the charges set out in the notice or other original pleading by filing a written answer with the agency.

- (5) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing officer or administrative law judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory violation without original service and running of times applicable to service of the original notice.
- (6) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing officer or administrative law judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing officer or administrative law judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments.

1200-13-15-.09 SERVICE OF NOTICE OF HEARING.

In any case in which an applicant or an enrollee has requested a hearing from the agency, a copy of the notice of hearing shall be delivered to the party by first class mail, postage prepaid, at the address required to be kept current with the agency by T.C.A. §§ 71-5-106(1) and 110(c)(1) and the address provided with the request for hearing, if different from the address on file with the agency. Delivery is presumed to occur in five (5) days from the date of mailing.

1200-13-15-.10 REPRESENTATION BY COUNSEL.

- (1) The agency shall notify all parties in a contested case proceeding of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (2) Any party to a contested case proceeding may be advised and represented, at the party's own expense, by a licensed attorney.
- (3) Any party to a contested case proceeding may represent him/herself or may participate through a duly authorized representative.
- (4) A party to a contested case proceeding may be represented by a non-attorney, as specifically permitted by federal or state law.

1200-13-15-.11 PRE-HEARING CONFERENCE.

- (1) In any action set for hearing the hearing officer or administrative law judge assigned to hear the case, upon his/her own motion or upon motion of one of the parties or their qualified representative, may direct the parties and/or the attorneys for the parties to appear before him/her for a conference to consider:
 - (a) The simplification of issues;
 - (b) The necessity or desirability of amendments to the pleadings;
 - (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 - (d) The limitation of the number of expert witnesses; or
 - (e) Such other matters as may aid in the disposition of the action.
- (2) The assigned hearing officer or administrative law judge shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by the admissions or agreements of the parties. Such order when entered controls the subsequent course of the contested case proceeding, unless modified at the hearing to prevent manifest injustice.
- (3) If a pre-hearing conference is not held, the assigned hearing officer or administrative law judge may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.
- (4) Unless precluded by law, informal disposition may be made of any appealed case by stipulation, agreed settlement, consent order or default.

1200-13-15-.12 DISCOVERY.

Any party to a contested case proceeding shall have the right to reasonable discovery pursuant to T.C.A. § 4-5-311.

- (1) Parties are encouraged to attempt to achieve any necessary discovery informally. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.
- (2) Upon motion of a party or upon the hearing officer or administrative law judge's own motion, the hearing officer or administrative law judge may order that discovery be completed by a certain date.
- (3) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion shall:
 - (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and

- (c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- (4) The hearing officer or administrative law judge shall decide any motion relating to discovery pursuant to the APA and the rules promulgated thereunder or the TRCP.
- (5) Other than as provided in subsection (3) above, discovery materials need not be filed with either the agency or, as designated, the TAHU or the APD.

1200-13-15-.13 RULES OF EVIDENCE.

- (1) The hearing officer or administrative law judge shall admit and give probative effect to evidence admissible in a Court and may also admit evidence which preserves probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The hearing officer or administrative law judge shall give effect to the rules of privilege recognized by law and shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.
- (2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency.
- (3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.
- (4) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.

1200-13-15-.14 EXAMINATION OF CASE FILE.

Any party to a contested case proceeding shall have the right to examine agency manuals and the contents of the case file with respect to the matter being contested, and all documents and records used as evidence, at a reasonable time either before the date of the hearing or during the hearing. Any party or his/her representative may copy entries or documents to be introduced at the hearing as supporting evidence.

1200-13-15-.15 ORDER OF PROCEEDINGS.

- (1) Order of proceedings for the hearing of contested cases:
 - (a) Hearing officer or administrative law judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) Hearing is called to order by the hearing officer or administrative law judge.
 - (c) Hearing officer or administrative law judge introduces self and gives a very brief statement of the nature of the proceedings.

- (d) Hearing officer or administrative law judge asks if the petitioner is represented by counsel, and if so, counsel is introduced. The hearing officer or administrative law judge then introduces the respondent's counsel and any other officials who may be present at the hearing.
- (e) The hearing officer or administrative law judge states what documents the record contains.
- (f) The hearing officer or administrative law judge swears the witnesses.
- (g) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding and are asked to leave the hearing room. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room, and the agency or any other party that is a corporation or other artificial person may have one appropriate individual, who may also be a witness, act as its party representative.
- (h) Any preliminary motions, stipulations, or agreed orders are entertained.
- (i) Opening statements are allowed by both the petitioner and the respondent.
- (j) Moving party (usually the petitioner) calls witnesses and questioning proceeds as follows:
 - 1. (Petitioner) moving party questions.
 - 2. (Respondent) other party cross-examines.
 - 3. (Petitioner) moving party redirects.
 - 4. (Respondent) other party re-cross-examines.
 - 5. Further questions by petitioner and respondent. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)
- (k) Other party (usually the Respondent) calls witnesses and questioning proceeds as follows:
 - 1. (Respondent) other party questions.
 - 2. (Petitioner) moving party cross-examines.
 - 3. (Respondent) other party redirects.
 - 4. (Petitioner) moving party re-cross-examines.
 - 5. Further questions by respondent and petitioner. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)
- (l) Petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
- (m) Closing arguments are allowed to be presented by the petitioner and by the respondent.
- (n) The hearing officer or administrative law judge announces the decision or takes the case under advisement.

- (2) The parties are informed that an initial order will be written and sent to the parties and that the initial order will inform the parties of their appeal rights.
- (3) Subparagraph (1) of this rule is intended to be merely a general outline as to the conduct of an administrative hearing and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

1200-13-15-.16 INITIAL ORDER.

- (1) The initial order issued by the hearing officer or administrative law judge shall be based exclusively on evidence introduced at the administrative hearing and shall contain the elements set forth at section .01.
- (2) The initial order shall be served on all parties of record within ninety (90) days of the agency receipt of the appeal.
- (3) The initial order shall be reviewed by a designated representative of the Commissioner prior to the entry of a final order.
- (4) The initial order shall include a statement of the available procedures and time limits for seeking reconsideration and/or appeal to the Commissioner.

1200-13-15-.17 THE FINAL ORDER.

- (1) The final order shall be issued pursuant to the authority of the Commissioner of the Department of Finance and Administration or his/her designated representative. The final order shall be binding upon all parties.
- (2) The final order in a contested case shall be in writing and shall be made available to each party.
- (3) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.

1200-13-15-.18 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.
 - (a) The failure of a party to attend or participate in a prehearing conference, hearing or other stage of a contested case proceeding after due notice thereof is cause for holding such party in default pursuant to T.C.A. §§ 4-5-309. Failure to comply with any lawful order of the hearing officer or administrative law judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case proceeding and thereby be cause for a holding of default.
 - (b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.
 - (c) The hearing officer or administrative law judge determines whether the service of notice is sufficient as a matter of law, according to rule 1200-13-15-.09.

- (d) If the notice is held to be adequate the hearing officer or administrative law judge shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1200-13-15-.09. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned if the absent party has the burden of proof or conducted without the participation of the absent party if the moving party bears the burden of proof.
 - (e) The hearing officer or administrative law judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after service of such notice of default, may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing officer or administrative law judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. §4—5—317.
- (2) Effect of Entry of Default.
- (a) Upon entry into the record of the default of the petitioner at a contested case proceeding, the appeal shall be dismissed as to all issues on which the petitioner bears the burden of proof.
 - (b) Upon entry into the record of the default of the respondent at a contested case hearing, the matter shall be tried as uncontested as to such respondent.
- (3) Uncontested Proceeding. When the matter is tried as uncontested, the petitioner has the burden of establishing its allegations by a preponderance of the evidence presented.

1200-13-15-.19 RECORD OF CONTESTED CASE PROCEEDINGS.

A record (which may consist of a tape or similar electronic recording) shall be made of all oral contested case proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be transcribed by the agency at its expense. This record shall be maintained for a period of time, not less than three years.

1200-13-15-.20 EX PARTE COMMUNICATION.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an appeal shall not communicate directly or indirectly in connection with any issue involved in such proceeding with any person except upon notice and opportunity for all parties to participate, except an agency member may communicate with other members of the agency, members of the Attorney General's staff or his personal assistants.

1200-13-15-.21 NOTICE OF RIGHT TO APPEAL THE INITIAL ORDER.

Written notice of the right to appeal is to accompany the initial order mailed to the parties. A petition for appeal from an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order. If an initial order is subject to both a timely petition for reconsideration and appeal, the petition for reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the petition for reconsideration.

1200-13-15-.22 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE INITIAL ORDER.

Written notice of the right to file a petition for reconsideration shall accompany the initial order mailed to the parties. A petition for reconsideration of an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order, stating the specific grounds upon which relief is requested. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

1200-13-15-.23 NOTICE OF RIGHT TO APPEAL THE FINAL ORDER.

Written notice of the right to appeal and the right to request a stay shall accompany the final order mailed to the parties. A petition for judicial review of a final order under TCA §4-5-322 must be filed with the Chancery Court having jurisdiction within sixty (60) days after the date of the final order, or if a petition for reconsideration of the final order is granted, within sixty (60) days of the entry of the final order disposing of the petition. The filing of a petition for reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted.

1200-13-15-.24 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

Written notice of the right to petition for reconsideration of the final order is to accompany the final order to the parties. Any party who feels aggrieved by a final order may, within fifteen (15) days following the effective date of the order, file a written petition for reconsideration with the TAHU or APD, as designated, which shall specify in detail the reasons for the request. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

1200-13-15-.25 EFFECT ON THE FINAL ORDER.

The filing of a petition for reconsideration of the final order shall not supersede or delay the effective date of the final order and said order shall take effect on the date entered by the TAHU or APD, as designated, and shall continue in effect until such petition shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.

1200-13-15-.26 GROUNDS FOR RECONSIDERATION

- (1) The hearing officer, administrative law judge or the commissioner's designee who rendered the initial or final order which is the subject of the petition, shall, within twenty (20) days of receiving the petition, enter a written order either: denying the petition; granting the petition and setting the matter for further proceedings; or, granting the petition and issuing a new order, initial or final. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied at the expiration of the twenty (20) day period.
- (2) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record. No new evidence shall be introduced, unless the party proposing such evidence shows good cause for failure to introduce the evidence in the original proceeding.

1200-13-15-.27 CLERICAL MISTAKES.

Prior to any appeal being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions, may be corrected by the hearing officer or administrative law judge at any time, on his/her own initiative or on motion of any party, and after such notice, if any, as the hearing officer or administrative law judge may require. The entering of a corrected order will not effect the dates of the original appeal time period.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-112, 71-5-134 and Executive Order No. 23

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of January, 2003. (01-28)

THE DEPARTMENT GENERAL SERVICES—0690**CHAPTER 0690-6-1****PURCHASE OF MATERIALS, SUPPLIES, EQUIPMENT AND SERVICES
LIMITATIONS OF LIABILITY**

Presented herein are proposed rules of the Department of General Services, submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of General Services to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed on the 24th Floor of the William R. Snodgrass Tennessee Tower located at 312 Eighth Avenue, North, Nashville, Tennessee 37243, and in the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue, North, Nashville, Tennessee, and must be signed by twenty-five (25) persons who will be affected by the rule, or by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: George Street, Purchasing Division, 3rd Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243, telephone number (615) 741-1035.

The text of the proposed rules is as follows:

New Rules**TABLE OF CONTENTS**

0690-6-1-.01 Policy Statement and Scope of Rules

0690-6-1-.02 Approval for Limitation of Liability

0690-6-1-.01 POLICY STATEMENT AND SCOPE OF RULES.

- (1) The General Assembly of Tennessee, in T.C.A. § 12-3-315, authorized the Department of General Services to promulgate rules setting forth the circumstances when, and the procedures under which, the State would purchase materials, supplies, equipment and services while accepting limitations of the liability of contractors for damage claims.

- (2) T.C.A. § 12-3-315 forbids the State from accepting any limitation of the contractor's liability for intentional torts, criminal acts, or fraudulent conduct. The statute also forbids the State from accepting any limitation of liability for an amount less than two times the value of the contract. Furthermore, neither the statute nor these regulations authorize the State to indemnify contractors for the acts or negligence of the contractors or third parties. All limitations of liability authorized under these rules must be subject to these limitations.
- (3) These rules shall apply to contracts for the purchase of materials, supplies, equipment and services that are procured pursuant to the Rules of the Department of General Services, Chapter 0690-3-1, when the Department has demonstrated that such materials, supplies, equipment and services cannot be secured without limiting the liability of contractors.

Authority: T.C.A. §§4-5-202, 12-3-101 et seq., and 12-3-315.

0690-6-1-.02 APPROVAL FOR LIMITATION OF LIABILITY.

- (1) Approval Timeliness.
 - (a) Any request to permit the limitation of contractor liability in a state contract for materials, supplies, equipment and services must be made, and a decision made thereon, at the appropriate time in the procurement process to ensure that no such decision shall detrimentally impact the fairness of the procurement or the interests of the State in competitive procurements.
 - (b) In the formal Invitation to Bid process, the Purchasing Division may determine to request approval for a limitation of liability after receiving written comments from potential bidders pursuant to the process. In which case, the request to limit liability shall be reviewed, a decision shall be rendered, and an amended Invitation to Bid shall be issued.
 - (c) The Purchasing Division may request, and the Commissioner of General Services may authorize, initiation of a new Invitation to Bid including a contractor's limitation of liability at any stage of the procurement process, in circumstances where the applicable procurement process has failed to provide responsive bid.
- (2) Approval Process.
 - (a) If the Purchasing Division considers it necessary to accept a limitation of liability, it shall submit a request to use a limitation of liability clause to the Commissioner of General Services.
 - (b) The request to use a limitation of liability shall be submitted under the signature of the Director of Purchasing. The request for approval shall contain justification that addresses the following:
 1. the text of the limitation of liability sought to be used;
 2. the risks of liability to the State created by the product purchased under the contract, and the impact on the State by allowing a limitation;
 3. the conditions in the market which justify a limitation of liability; and

4. the anticipated impact on the State's procurement if limitation of liability is not allowed.

(c) The request will be approved or disapproved by the Commissioner of General Services or authorized designee. The Commissioner may approve the language submitted or may authorize acceptance of limitation of liability under alternative language. Any approval will be in writing and detail the specific limitation of liability approved.

(3) Approval Documentation.

(a) Said written approval permitting a limitation of liability shall be filed with the Board of Standards. The written approval shall be presented along with the subject purchasing documents submitted to the Commissioner of General Services.

Authority: T.C.A. §§4-5-202, 12-3-101 et seq., and 12-3-315.

The proposed rule set out herein was properly filed in the Department of State on the 24th day of January, 20003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 30th day of May, 2003. (01-14)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200
BUREAU OF HEALTH SERVICES**

**CHAPTER 1200-20-11
STATE CONRAD J-1 VISA WAIVER**

Presented herein are proposed amendments of the Department of Health, Bureau of Health Services submitted pursuant to Tennessee Code Annotated § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Bureau of Health Services, 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 the Bureau of Health Services on the Fourth Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee, 37247, and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee, 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Michael Gregory, Tennessee Department of Health, Sixth Floor - Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, 37247, (615) 741-0417.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1200-20-11-.02, Definitions, is amended by deleting paragraph (1), "Allowable twenty (20)," in its entirety and renumbering the remaining paragraphs accordingly.

Authority: *T.C.A. §§4-5-202 and 68-1-103(a).*

Rule 1200-20-11-.04, Eligibility, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the paragraph shall read:

- (2) At the discretion of the Department, the Department will support and facilitate the placement of as many primary care physicians per year as federal law permits. Each such primary care physician must agree to practice primary health care for a minimum of forty (40) hours per week in health care facilities located in federally designated Health Professional Shortage Areas (HPSA's) or Medically Underserved Areas (MUA's) in rural Health Resource Shortage Areas (HRSA's) for Primary Care, Obstetrics, Pediatrics, or TennCare designated by the State. The practitioner must agree to practice at that site for a minimum of three (3) years.

Authority: *T.C.A. §§4-5-202 and 68-1-103(a).*

Rule 1200-20-11-.05, Application Review, Approval, Denial, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the paragraph shall read:

- (3) Completed applications will be considered in the order in which they were received. All completed applications beyond the maximum number of placements permitted by federal law per year will be held in a pending file to be reconsidered before any other applications at the beginning of the new federal fiscal year. However, to be reconsidered, an applicant must state in writing his/her desire to be reconsidered. In such instances, each applicant will be contacted by the Department to confirm such desire.

Authority: *T.C.A. §§4-5-202 and 68-1-103(a).*

Rule 1200-20-11-.05, Application Review, Approval, Denial, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the paragraph shall read:

- (5) Once it is determined that the applicant meets all of the appropriate requirements and the application is complete, a number will be assigned to the application which indicates that the Department has accepted the application as one of its allowable placements. A certified letter will be sent to the sponsoring employer notifying the sponsoring employer that the application has been forwarded to the appropriate federal agency for processing.

Authority: *T.C.A. §§4-5-202 and 68-1-103(a).*

The proposed rules set out herein were properly filed in the Department of State on the 31st day of January, 2003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 30th day of May, 2003. (01-22)

**THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT –
0800**

DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-1

GENERAL RULES OF THE WORKERS' COMPENSATION PROGRAM

Presented herein are proposed repeals by the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Labor and Workforce Development to promulgate these repeals 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 repeals are published. Such petition to be effective must be filed with the Uninsured Employers Fund, Workers' Compensation Division, Tennessee Department of Labor and Workforce Development, Second Floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN 37243 and in the Department of State, Eighth Floor, William Snodgrass Building, Tennessee Tower, 312 8th Ave. North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the repeals, or submitted by a municipality which will be affected by the repeals, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed repeals, contact: Shara Hamlett, TN Dept. of Labor and Workforce Dev., Division of Workers' Compensation, Uninsured Employers Fund, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, Telephone: (615) 253-6261.

The text of the proposed repeals is as follows:

REPEAL

Rule 0800-2-1-.04 Failure to Provide Coverage is repealed.

Authority: T.C.A. §§50-6-412, 50-6-233, 50-6-118, and 50-6-801

**CHAPTER 0800-2-10
CIVIL APPEAL PROCEDURES**

REPEAL

Rule 0800-2-10 Civil Appeal Procedures is repealed in its entirety.

Authority: T.C.A. §§50-6-412, 50-6-233, 50-6-118, and 50-6-801

The proposed repeals set out herein were properly filed in the Department of State on the 3rd day of January, 2003, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 30th day of May, 2003. (01-05)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0020 - Board of Accountancy - Public necessity rule dealing with score requirements and grading provisions for written certified public accountant (“CPA”) examinations, chapter 0020-1 Board of Accountancy, Licensing and Registration Requirements, 11 T.A.R. (November 2002) - Filed October 28, 2002; effective August 11, 2003. (10-35)
- 0780 - Commerce and Insurance - Division of Insurance - Public necessity rules dealing with by rule standards and procedures for the administration of pre-licensing education and examination requirements for persons applying to become insurance producers licensed in this state, Chapter 0780-1-74 Pre-Licensing Education and Examination Requirements for Insurance Producers, 1 T.A.R. (January 2003) - Filed December 30, 2002; effective through June 13, 2003. (12-20)
- 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 DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provision of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required by court order, to clarify the rules governing provider reimbursement as interpreted by the Court of Appeals of Tennessee in *River Park Hospital, Inc. v. BlueCross BlueShield of Tennessee, Inc. and Volunteer State Health Plan, Inc., d/b/a BlueCare*, No. M2001-00288-COA-R3-CV (Oct. 11, 2002).

The State of Tennessee has a federal waiver for the TennCare Demonstration Project under Section 1115 of the Social Security Act, which provides for, among other things, the expansion of the population to which Title XIX medical services are provided and a managed care system pursuant to which payment is made to providers of medical services by managed care contractors/organizations under contract with the Bureau of TennCare. Federal Medicaid requirements and TennCare rules prohibit the collection of payment from recipients of Title XIX medical services except in specific circumstances. TennCare rules do not adequately address the reimbursement of the providers of medical services who are not in a contractual relationship with a managed care contractor/organization under contract with the Bureau of TennCare. These amendments clarify the rate at which a non-contracting provider is to be reimbursed for the provision of authorized medical services to a TennCare enrollee. They further clarify when payment may be collected from a recipient of services.

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

Manny Martins
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

OF

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION

BUREAU OF TENNCARE CHAPTER 1200-13-12

AMENDMENTS

Rule 1200-13-12-.08 Provider is amended by adding a new paragraph (1) and renumbering the current paragraph (1) as paragraph (2) so as amended the new paragraph (1) shall read as follows:

- (1) Payment in full.
 - (a) All MCO/BHO participating network providers must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCO/BHO plus any deductible or copayment required by the TennCare Program to be paid by the individual.
 - (b) Any non-participating providers who provide TennCare Program covered services by authorization from an MCO/BHO must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCO/BHO plus any deductible or copayment required by the TennCare Program to be paid by the individual.

Current paragraph (1), of rule 1200-13-12-.08 Provider, renumbered as paragraph (2) is amended by deleting the paragraph in its entirety and inserting the following new paragraph, so that, as amended the paragraph shall state:

- (2) In situations where a MCO/BHO authorizes a service to be rendered by a provider who is not a participating network provider with the MCO/BHO, payment to the provider shall be no less than eighty percent

(80%) of the lowest rate paid by the MCO/BHO to equivalent participating network providers for the same service. For emergency services provided to an enrollee by a provider who is not a participating network provider, the MCO/BHO shall reimburse the provider at the rate of 100% of the lowest rate paid to the MCO/BHO's network providers. Emergency care to enrollees shall not require preauthorization.

Current paragraph (2), of rule 1200-13-12-.08 Provider, renumbered as paragraph (3) is amended by deleting subparagraph (a), and inserting the following new subparagraph so that, as amended the subparagraph shall state:

- (3) Participation in the TennCare program will be limited to providers who:
- (a) Accept, as payment in full, the amounts paid by the MCO/BHO, including copays from the enrollee, or the amount paid in lieu of the MCO/BHO by a third party (Medicare, insurance, etc.).
1. A provider may not deny services to any eligible individual due to the individual's inability to pay the cost-sharing amount imposed by the TennCare Program plan in accordance with 42 CFR § 431.55(g) or § 447.53. The previous sentence does not apply to an individual who is able to pay or who is participating in the TennCare Standard program. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge.
 2. When alternative sources of payment are potentially available, the provider must elect a payment source prior to billing the MCO/BHO and may not withdraw billing nor refund payment made by the MCO/BHO upon a determination of additional sources of payment.

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

The Public Necessity rules set out herein were properly filed in the Department of State on the 2nd day of January, 2003, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 16th day of June, 2003. (01-02)

**THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provision of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required by court order, to clarify the rules governing provider reimbursement as interpreted by the Court of Appeals of Tennessee in *River Park Hospital, Inc. v. BlueCross BlueShield of Tennessee, Inc. and Volunteer State Health Plan, Inc., d/b/a BlueCare*, No. M2001-00288-COA-R3-CV (Oct. 11, 2002).

The State of Tennessee has a federal waiver for the TennCare Demonstration Project under Section 1115 of the Social Security Act, which provides for, among other things, the expansion of the population to which Title XIX medical services are provided and a managed care system pursuant to which payment is made to providers of medical services by managed care contractors/organizations under contract with the Bureau of TennCare. Federal Medicaid requirements and TennCare rules prohibit the collection of payment from recipients of Title XIX medical services except in specific circumstances. TennCare rules do not adequately address the reimbursement of the providers of medical services who are not in a contractual relationship with a managed care contractor/organization under contract with the Bureau of TennCare. These amendments clarify the rate at which a non-contracting provider is to be reimbursed for the provision of authorized medical services to a TennCare enrollee. They further clarify when payment may be collected from a recipient of services.

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

Manny Martins
Deputy Commissioner
Tennessee Department of Finance
and Administration

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

AMENDMENTS

Rule 1200-13-13-.08 Provider is amended by adding a new paragraph (1) and renumbering the current paragraph (1) as paragraph (2) so as amended the new paragraph (1) shall read as follows:

- (1) Payment in full.
 - (a) All MCC participating network providers must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.
 - (b) Any non-participating providers who provide TennCare Program covered services by authorization from an MCC must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.

Current paragraph (1) of rule 1200-13-13-.08 Provider, renumbered as paragraph (2) is amended by deleting the paragraph in its entirety and inserting the following new paragraph, so that, as amended the paragraph shall state:

- (2) In situations where a MCC authorizes a service to be rendered by a provider who is not a participating network provider with the MCC, payment to the provider shall be no less than eighty percent (80%) of the lowest rate paid by the MCC to equivalent participating network providers for the same service. For

emergency services provided to an enrollee by a provider who is not a participating network provider, the MCC shall reimburse the provider at the rate of 100% of the lowest rate paid to the MCC's network providers. Emergency care to enrollees shall not require preauthorization.

Current paragraph (2) of rule 1200-13-13-.08 Provider, renumbered as paragraph (3) is amended by deleting subparagraph (a), and inserting the following new subparagraph so that, as amended the subparagraph shall state:

- (3) Participation in the TennCare program will be limited to providers who:
 - (a) Accept, as payment in full, the amounts paid by the MCC, including copays from the enrollee, or the amount paid in lieu of the MCC by a third party (Medicare, insurance, etc.).
 - 1. A provider may not deny services to any eligible individual due to the individual's inability to pay the cost-sharing amount imposed by the TennCare Program plan in accordance with 42 CFR § 431.55(g) or § 447.53. The previous sentence does not apply to an individual who is able to pay or who is participating in the TennCare Standard program. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge.
 - 2. When alternative sources of payment are potentially available, the provider must elect a payment source prior to billing the MCC and may not withdraw billing nor refund payment made by the MCC upon a determination of additional sources of payment.

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

The Public Necessity rules set out herein were properly filed in the Department of State on the 2nd day of January, 2003, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 16th day of June, 2003. (01-03)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provision of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required by court order, to clarify the rules governing provider reimbursement as interpreted by the Court of Appeals of Tennessee in *River Park Hospital, Inc. v. BlueCross BlueShield of Tennessee, Inc. and Volunteer State Health Plan, Inc.*, d/b/a BlueCare, No. M2001-00288-COA-R3-CV (Oct. 11, 2002).

The State of Tennessee has a federal waiver for the TennCare Demonstration Project under Section 1115 of the Social Security Act, which provides for, among other things, the expansion of the population to which Title XIX medical services are provided and a managed care system pursuant to which payment is made to providers of medical services by managed care contractors/organizations under contract with the Bureau of TennCare. Federal Medicaid requirements and TennCare rules prohibit the collection of payment from recipients of Title XIX medical services except in specific circumstances. TennCare rules do not adequately address the reimbursement of the providers of medical services who are not in a contractual relationship with a managed care contractor/organization under contract with the Bureau of TennCare. These amendments clarify the rate at which a non-contracting provider is to be reimbursed for the provision of authorized medical services to a TennCare enrollee. They further clarify when payment may be collected from a recipient of services.

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.

Manny Martins
Deputy Commissioner
Tennessee Department of
Finance and Administration

PUBLIC NECESSITY RULES

OF

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION BUREAU OF TENNCARE

CHAPTER 1200-13-14 TENNCARE STANDARD

AMENDMENTS

Rule 1200-13-14-.08 Provider is amended by adding a new paragraph (1) and renumbering the current paragraph (1) as paragraph (2) so as amended the new paragraph (1) shall read as follows:

- (1) Payment in full.
 - (a) All MCC participating network providers must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.
 - (b) Any non-participating providers who provide TennCare Program covered services by authorization from an MCC must accept as payment in full for provision of covered services to TennCare enrollees, the amounts paid by the MCC plus any deductible or copayment required by the TennCare Program to be paid by the individual.

Current paragraph (1) of rule 1200-13-14-.08 Provider, renumbered as paragraph (2) is amended by deleting the paragraph in its entirety and inserting the following new paragraph, so that, as amended the paragraph shall state:

- (2) In situations where a MCC authorizes a service to be rendered by a provider who is not a participating network provider with the MCC, payment to the provider shall be no less than eighty percent (80%) of the lowest rate paid by the MCC to equivalent participating network providers for the same service. For emergency services provided to an enrollee by a provider who is not a participating network provider, the MCC shall reimburse the provider at the rate of 100% of the lowest rate paid to the MCC's network providers. Emergency care to enrollees shall not require preauthorization.

Current paragraph (2) of rule 1200-13-14-.08 Provider, renumbered as paragraph (3) is amended by deleting subparagraph (a), and inserting the following new subparagraph so that, as amended the subparagraph shall state:

- (3) Participation in the TennCare program will be limited to providers who:
 - (a) Accept, as payment in full, the amounts paid by the MCC, including copays from the enrollee, or the amount paid in lieu of the MCC by a third party (Medicare, insurance, etc.).
 1. A provider may not deny services to any eligible individual due to the individual's inability to pay the cost-sharing amount imposed by the TennCare Program plan in accordance with 42 CFR § 431.55(g) or § 447.53. The previous sentence does not apply to an individual who is able to pay or who is participating in the TennCare Standard program. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge.
 2. When alternative sources of payment are potentially available, the provider must elect a payment source prior to billing the MCC and may not withdraw billing nor refund payment made by the MCC upon a determination of additional sources of payment.

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

The Public Necessity rules set out herein were properly filed in the Department of State on the 2nd day of January, 2003, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 16th day of June, 2003. (01-04)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting a new rule as an amendment to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-209 and the Medical Assistance Act, Tennessee Code Annotated, Section 71-5-134.

I have made a finding that this rule is required to protect the due process rights of persons potentially eligible for medical assistance through the TennCare Standard program.

The State of Tennessee has received federal approval for a new modified TennCare Demonstration Project under Section 1115 of the Social Security Act, effective July 1, 2002 through June 30, 2007. The modified TennCare program is a managed care program for both the Medicaid population and the expansion population. Thus, as of July 1, 2002, there are two TennCare programs, TennCare Medicaid and TennCare Standard.

TennCare Standard will be offered to Tennessee residents who do not have access to group health insurance and who do not qualify financially to receive Title XIX Medicaid. These individuals have certain due process rights to appeal denials of eligibility for TennCare Standard enrollment. A timely appeal process must be accessible to these applicants. This rule delineates the appeals process.

Pursuant to Tennessee Code Annotated, Section 71-5-134, to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

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

Manny Martins
Deputy Commissioner
Tennessee Department of Finance and Administration

SUBSTANCE OF PROPOSED RULE

Rules of the Department of Finance and Administration is amended by adding Chapter 1200-13-15 Rules of the TennCare administrative Hearing Unit which shall read as follows:

**CHAPTER 1200-13-15
ADMINISTRATIVE HEARING UNIT**

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1200-13-15-.05	Filing and Service of Pleadings and Other Materials	1200-13-15-.19	Record of Oral Proceedings
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1200-13-15-.07	Place	1200-13-15-.21	Notice of Right to Appeal the Initial Order
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1200-13-15-.13	Rules of Evidence	1200-13-15-.27	Clerical Mistakes
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1200-13-15-.01 DEFINITIONS.

- (1) **Administrative Hearing.** A contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, T.C.A. §§4-5-301, et seq., to allow an applicant for TennCare Standard to appeal an action by the agency or the agency's designee regarding all matters of eligibility for TennCare Standard. An evidentiary hearing held before an impartial hearing officer or administrative law judge, at TennCare's discretion, who renders an initial order pursuant to T.C.A. § 4-5-314.
- (2) **Administrative Law Judge.** An impartial employee or official of the Department of State Administrative Procedures Division who is licensed to practice law and authorized by law to conduct contested case proceedings pursuant to T.C.A. § 4-5-301.
- (3) **Administrative Procedures Act.** The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.
- (4) **Agency.** The Bureau of TennCare.
- (5) **APA.** The Administrative Procedures Act.
- (6) **APD.** The Department of State Administrative Procedures Division.
- (7) **Appeal.** The process of obtaining an administrative hearing as a result of an Agency action regarding matters affecting eligibility for TennCare Standard, or the process of obtaining review of an initial order by the Commissioner's Designee or judicial review of a final order.
- (8) **Appellant.** An individual who is dissatisfied with an Agency action regarding matters affecting eligibility for TennCare Standard and who requests an administrative hearing, or is dissatisfied with the results of an administrative hearing and requests review of an initial or final order.
- (9) **Applicant.** An individual who submits an application for TennCare Standard health coverage or the person who acts as an authorized representative for the applicant.

- (10) **Burden of Proof.** A preponderance of the evidence. The minimum evidentiary standard required in order to prevail in an administrative hearing.
- (11) **Bureau.** The Bureau of TennCare.
- (12) **Bureau of TennCare.** The administrative unit of TennCare which is responsible for the administration of TennCare, the program administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (13) **Commissioner.** The chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located.
- (14) **Commissioner's Designee.** A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for stay or reconsideration of final orders.
- (15) **Contested Case Proceeding.** A proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.
- (16) **Department.** The Tennessee Department of Finance and Administration.
- (17) **Fair Hearing.** An administrative hearing.
- (18) **Findings of Fact.** The factual findings following the administrative hearing, enumerated in the initial and/or final order, which includes a concise and explicit statement of the underlying facts of record to support the findings.
- (19) **Final Order.** The initial order becomes a final order without further notice if not appealed, or if the initial order is appealed pursuant to T.C.A. § 4-5-315, the Commissioner or Commissioner's Designee may render a final order. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included.
- (20) **Hearing.** An administrative hearing.
- (21) **Hearing Officer.** An impartial official of the Department of Finance and Administration or the Department of State Administrative Procedures Division who is designated by the Commissioner or his/her designated representative to conduct administrative hearings. The person so designated shall have no direct involvement in the action under consideration prior to the filing of the appeal.
- (22) **Initial Order.** The decision of the hearing officer or administrative law judge following an administrative hearing. The initial order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It shall include a statement of any circumstances under which the initial order may, without further notice, become a final order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included.
- (23) **Notice of Hearing.** The pleading filed with the TennCare Administrative Hearing Unit by the agency upon receipt of an appeal. It shall contain a statement of the time, place, nature of the hearing, and the right to be

represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307 (b).

- (24) Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (25) Person. Any individual.
- (26) Petitioner. The party who initiated the contested case proceeding and who usually bears the burden of proof.
- (27) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as, a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (28) Respondent. The party who is responding to the action brought by the petitioner, usually the Agency.
- (29) TAHU. The TennCare Administrative Hearing Unit.
- (30) TennCare Administrative Hearing Unit. The office established within the Department of Finance and Administration to provide Hearing Officers for the purpose of conducting Administrative Hearings of appeals of agency actions regarding matters affecting eligibility under TennCare Standard.
- (31) TennCare Standard. That part of the TennCare Program which provides health coverage for Tennessee residents who:
 - (a) Are uninsured, do not have access to group health insurance (either directly or indirectly through another family member), and whose income is less than the poverty level for which Federal and State appropriations are made available; or
 - (b) Are uninsured, do not have or have access to group health insurance (either directly or indirectly through another family member), and have proven that s/he meets the appropriate Medical Eligibility criteria for his/her circumstances; or
 - (c) Are uninsured children under age nineteen (19), whose family income is less than 200% poverty, who have access to insurance but have not purchased it, and who have been continuously enrolled in this category since December 31, 2001; or
 - (d) Had Medicare as of December 31, 2002 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of "uninsurable" in effect at that time. Effective January 1, 2003 these individuals are eligible only for the TennCare Standard pharmacy benefit package; or
 - (e) Were enrolled as dislocated workers on June 30, 2002, have not purchased other insurance, and have incomes that do not exceed the amount established for redetermination during the waiver transition period in rule 1200-13-14-.02(7).

- (32) TennCare Standard Enrollee (Enrollee). An individual covered under TennCare Standard.
- (33) TRCP. The Tennessee Rules of Civil Procedure.

1200-13-15-.02 SCOPE.

- (1) These rules shall govern all administrative hearings conducted for the purpose of determining TennCare Standard eligibility and related issues, and will be relied upon by hearing officers and administrative law judges conducting such hearings. Prior to determining TennCare Standard eligibility, an applicant's TennCare Medicaid eligibility must be denied. TennCare Medicaid eligibility appeals shall be conducted by the Department of Human Services pursuant to /Chapter 1240-5 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) In any procedural situation that arises that is not specifically addressed by these rules, reference may be made to the following authorities in the order listed for guidance as to the proper procedure to follow: the Tennessee Uniform Administrative Procedures Act and the rules promulgated thereunder, and the Tennessee Rules of Civil Procedure.

1200-13-15-.03 AUTHORITY OF HEARING OFFICER.

- (1) The Commissioner has placed responsibility for administrative hearings in the TennCare Administrative Hearing Unit and the Department of State Administrative Procedures Division. The hearing officer or administrative law judge is vested with full authority to conduct the hearing process in accordance with these rules.
- (2) The hearing officer or administrative law judge shall have the authority to do the following:
 - (a) Schedule and conduct the hearing;
 - (b) Administer oaths;
 - (c) Issue subpoenas;
 - (d) Rule upon offers of proof;
 - (e) Regulate the course of the hearing;
 - (f) Write an initial order stating his/her decision; and
 - (g) Rule on petitions for reconsideration or stay of the initial order or final order.

1200-13-15-.04 SUBPOENAS FOR EVIDENCE AND WITNESSES.

The parties shall have the power in an administrative hearing to require the attendance of witnesses and the production of books, records, papers, or other tangible things as may be necessary and proper for the purpose of the administrative hearing. It shall be the responsibility of the hearing officer or administrative law judge to issue the subpoena, but it shall be the responsibility of the parties involved in the case to

request the issuance of a subpoena. The hearing officer or administrative law judge at the request of any party shall issue signed subpoenas in blank. Parties shall complete and serve their own subpoenas. Subpoenas may be served at any place within the State by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

1200-13-15-.05 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings and any other materials required to be filed by a time certain as the result of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the TAHU or the APD, as designated, within the required time period.
- (2) Upon the involvement of either the TAHU or the APD in any contested case, all pleadings and other materials required to be filed or submitted prior to the administrative hearing shall be filed with the designated office, where they will be stamped with the date and hour of their receipt.
- (3) Petitions for review of an initial order and for reconsideration or stay of a final order may be filed with the agency or either the TAHU or the APD, as designated in the order.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1200-13-15-.12.
- (5) Copies of any and all materials filed with the agency or the TAHU or the APD in a contested case shall also be served upon all parties, or upon their counsel, and shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or by hand delivery.

1200-13-15-.06 TIME.

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- (2) When an act is required or allowed to be done at or within a specified time, the opposing party shall have the same amount of time to respond as the initiating party, and the hearing officer or administrative law judge may not permit the act to be done late.
- (3) Due to mandatory Federal Court timeframes, if an appellant requests a continuance the deadlines shall be extended by like period of time.

1200-13-15-.07 PLACE.

In the discretion of the hearing officer or administrative law judge, all or part of the administrative hearing, including any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

1200-13-15-.08 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

- (1) Commencement of Action. A contested case proceeding shall be commenced by appeal of an affected person from an agency action.
- (2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the agency.
- (3) Filing of Documents. When a contested case is commenced the agency shall provide the TAHU or the APD with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency concerning that particular case. Legible copies may be filed in lieu of originals.
- (4) Answer. The party may respond to the charges set out in the notice or other original pleading by filing a written answer with the agency.
- (5) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing officer or administrative law judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory violation without original service and running of times applicable to service of the original notice.
- (6) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing officer or administrative law judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing officer or administrative law judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments.

1200-13-15-.09 SERVICE OF NOTICE OF HEARING.

- (1) In any case in which a party has requested a hearing from an agency, a copy of the notice of hearing shall be delivered to the party by first class mail, postage prepaid, at the address required to be kept current with the agency by T.C.A. §§71-5-106(1) and 110(c)(1) and the address provided with the request for hearing, if different from the address on file with the agency. Delivery is presumed to occur in five (5) days from the date of mailing.

1200-13-15-.10 REPRESENTATION BY COUNSEL.

- (1) The agency shall notify all parties in a contested case proceeding of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (2) Any party to a contested case proceeding may be advised and represented, at the party's own expense, by a licensed attorney.

- (3) Any party to a contested case proceeding may represent him/herself or may participate through a duly authorized representative.
- (4) A party to a contested case proceeding may be represented by a non-attorney, as specifically permitted by federal or state law.

1200-13-15-.11 PRE-HEARING CONFERENCE.

- (1) In any action set for hearing the hearing officer or administrative law judge assigned to hear the case, upon his/her own motion or upon motion of one of the parties or their qualified representative, may direct the parties and/or the attorneys for the parties to appear before him/her for a conference to consider:
 - (a) The simplification of issues;
 - (b) The necessity or desirability of amendments to the pleadings;
 - (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 - (d) The limitation of the number of expert witnesses; or
 - (e) Such other matters as may aid in the disposition of the action.
- (2) The assigned hearing officer or administrative law judge shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by the admissions or agreements of the parties. Such order when entered controls the subsequent course of the contested case proceeding, unless modified at the hearing to prevent manifest injustice.
- (3) If a pre-hearing conference is not held, the assigned hearing officer or administrative law judge may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.
- (4) Unless precluded by law, informal disposition may be made of any appealed case by stipulation, agreed settlement, consent order or default.

1200-13-15-.12 DISCOVERY.

Any party to a contested case proceeding shall have the right to reasonable discovery pursuant to T.C.A. § 4-5-311.

- (1) Parties are encouraged to attempt to achieve any necessary discovery informally. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.
- (2) Upon motion of a party or upon the hearing officer or administrative law judge's own motion, the hearing officer or administrative law judge may order that discovery be completed by a certain date.
- (3) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion shall:

- (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- (4) The hearing officer or administrative law judge shall decide any motion relating to discovery pursuant to the APA and the rules promulgated thereunder or the TRCP.
 - (5) Other than as provided in subsection (3) above, discovery materials need not be filed with either the agency or, as designated, the TAHU or the APD.

1200-13-15-.13 RULES OF EVIDENCE.

- (1) The hearing officer or administrative law judge shall admit and give probative effect to evidence admissible in a Court and may also admit evidence which preserves probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The hearing officer or administrative law judge shall give effect to the rules of privilege recognized by law and shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.
- (2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency.
- (3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.
- (4) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.

1200-13-15-.14 EXAMINATION OF CASE FILE.

Any party to a contested case proceeding shall have the right to examine agency manuals and the contents of the case file with respect to the matter being contested, and all documents and records used as evidence, at a reasonable time either before the date of the hearing or during the hearing. Any party or his/her representative may copy entries or documents to be introduced at the hearing as supporting evidence.

1200-13-15-.15 ORDER OF PROCEEDINGS.

- (1) Order of proceedings for the hearing of contested cases:
 - (a) Hearing officer or administrative law judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.

- (b) Hearing is called to order by the hearing officer or administrative law judge.
- (c) Hearing officer or administrative law judge introduces self and gives a very brief statement of the nature of the proceedings.
- (d) Hearing officer or administrative law judge asks if the petitioner is represented by counsel, and if so, counsel is introduced. The hearing officer or administrative law judge then introduces the respondent's counsel and any other officials who may be present at the hearing.
- (e) The hearing officer or administrative law judge states what documents the record contains.
- (f) The hearing officer or administrative law judge swears the witnesses.
- (g) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding and are asked to leave the hearing room. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room, and the agency or any other party that is a corporation or other artificial person may have one appropriate individual, who may also be a witness, act as its party representative.
- (h) Any preliminary motions, stipulations, or agreed orders are entertained.
- (i) Opening statements are allowed by both the petitioner and the respondent.
- (j) Moving party (usually the petitioner) calls witnesses and questioning proceeds as follows:
 - 1. (Petitioner) moving party questions.
 - 2. (Respondent) other party cross-examines.
 - 3. (Petitioner) moving party redirects.
 - 4. (Respondent) other party re-cross-examines.
 - 5. Further questions by petitioner and respondent. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)
- (k) Other party (usually the Respondent) calls witnesses and questioning proceeds as follows:
 - 1. (Respondent) other party questions.
 - 2. (Petitioner) moving party cross-examines.
 - 3. (Respondent) other party redirects.
 - 4. (Petitioner) moving party re-cross-examines.
 - 5. Further questions by respondent and petitioner. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)

- (l) Petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
 - (m) Closing arguments are allowed to be presented by the petitioner and by the respondent.
 - (n) The hearing officer or administrative law judge announces the decision or takes the case under advisement.
- (2) The parties are informed that an initial order will be written and sent to the parties and that the initial order will inform the parties of their appeal rights.
 - (3) Subparagraph (1) of this rule is intended to be merely a general outline as to the conduct of an administrative hearing and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

1200-13-15-.16 INITIAL ORDER.

- (1) The initial order issued by the hearing officer or administrative law judge shall be based exclusively on evidence introduced at the administrative hearing and shall contain the elements set forth at section .01.
- (2) The initial order shall be served on all parties of record within ninety (90) days of the agency receipt of the appeal.
- (3) The initial order shall be reviewed by a designated representative of the Commissioner prior to the entry of a final order.
- (4) The initial order shall include a statement of the available procedures and time limits for seeking reconsideration and/or appeal to the Commissioner.

1200-13-15-.17 THE FINAL ORDER.

- (1) The final order shall be issued pursuant to the authority of the Commissioner of the Department of Finance and Administration or his/her designated representative. The final order shall be binding upon all parties.
- (2) The final order in a contested case shall be in writing and shall be made available to each party.
- (3) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.

1200-13-15-.18 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.
 - (a) The failure of a party to attend or participate in a prehearing conference, hearing or other stage of a contested case proceeding after due notice thereof is cause for holding such party in default pursuant to T.C.A. §§ 4-5-309. Failure to comply with any lawful order of the hearing officer or administrative law judge, necessary to maintain the orderly conduct of the hearing, may be

deemed a failure to participate in a stage of a contested case proceeding and thereby be cause for a holding of default.

- (b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.
 - (c) The hearing officer or administrative law judge determines whether the service of notice is sufficient as a matter of law, according to rule 1200-13-15-.09.
 - (d) If the notice is held to be adequate the hearing officer or administrative law judge shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1200-13-15-.09. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned if the absent party has the burden of proof or conducted without the participation of the absent party if the moving party bears the burden of proof.
 - (e) The hearing officer or administrative law judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after service of such notice of default, may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing officer or administrative law judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. §4—5—317.
- (2) Effect of Entry of Default.
- (a) Upon entry into the record of the default of the petitioner at a contested case proceeding, the appeal shall be dismissed as to all issues on which the petitioner bears the burden of proof.
 - (b) Upon entry into the record of the default of the respondent at a contested case hearing, the matter shall be tried as uncontested as to such respondent.
- (3) Uncontested Proceeding. When the matter is tried as uncontested, the petitioner has the burden of establishing its allegations by a preponderance of the evidence presented.

1200-13-15-.19 RECORD OF CONTESTED CASE PROCEEDINGS.

A record (which may consist of a tape or similar electronic recording) shall be made of all oral contested case proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be transcribed by the agency at its expense. This record shall be maintained for a period of time, not less than three years.

1200-13-15-.20 EX PARTE COMMUNICATION.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an appeal shall not communicate directly or indirectly in connection with any issue involved in such proceeding with any person except upon notice and opportunity for all parties to participate, except an agency member may communicate with other members of the agency, members of the Attorney General's staff or his personal assistants.

1200-13-15-.21 NOTICE OF RIGHT TO APPEAL THE INITIAL ORDER.

Written notice of the right to appeal is to accompany the initial order mailed to the parties. A petition for appeal from an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order. If an initial order is subject to both a timely petition for reconsideration and appeal, the petition for reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the petition for reconsideration.

1200-13-15-.22 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE INITIAL ORDER.

Written notice of the right to file a petition for reconsideration shall accompany the initial order mailed to the parties. A petition for reconsideration of an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order, stating the specific grounds upon which relief is requested. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

1200-13-15-.23 NOTICE OF RIGHT TO APPEAL THE FINAL ORDER.

Written notice of the right to appeal and the right to request a stay shall accompany the final order mailed to the parties. A petition for judicial review of a final order under TCA §4-5-322 must be filed with the Chancery Court having jurisdiction within sixty (60) days after the date of the final order, or if a petition for reconsideration of the final order is granted, within sixty (60) days of the entry of the final order disposing of the petition. The filing of a petition for reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted.

1200-13-15-.24 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

Written notice of the right to petition for reconsideration of the final order is to accompany the final order to the parties. Any party who feels aggrieved by a final order may, within fifteen (15) days following the effective date of the order, file a written petition for reconsideration with the TAHU or APD, as designated, which shall specify in detail the reasons for the request. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

1200-13-15-.25 EFFECT ON THE FINAL ORDER.

The filing of a petition for reconsideration of the final order shall not supersede or delay the effective date of the final order and said order shall take effect on the date entered by the TAHU or APD, as designated, and shall continue in effect until such petition shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.

1200-13-15-.26 GROUNDS FOR RECONSIDERATION

- (1) The hearing officer, administrative law judge or the commissioner's designee who rendered the initial or final order which is the subject of the petition, shall, within twenty (20) days of receiving the petition,

enter a written order either: denying the petition; granting the petition and setting the matter for further proceedings; or, granting the petition and issuing a new order, initial or final. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied at the expiration of the twenty (20) day period.

- (2) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record. No new evidence shall be introduced, unless the party proposing such evidence shows good cause for failure to introduce the evidence in the original proceeding.

1200-13-15-.27 CLERICAL MISTAKES.

Prior to any appeal being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions, may be corrected by the hearing officer or administrative law judge at any time, on his/her own initiative or on motion of any party, and after such notice, if any, as the hearing officer or administrative law judge may require. The entering of a corrected order will not effect the dates of the original appeal time period.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-112, 71-5-134 and Executive Order No. 23

The Public Necessity rules set out herein were properly filed in the Department of State on the 29th day of January, 2003, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 13th day of July, 2003. (01-23)

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RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 DIVISION OF INSURANCE

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Tenn. Code Ann. §56-26-204(a). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. §4-5-204 and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CST on the 18th day of March, 2003.

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

For a copy of this notice of rulemaking hearing, contact: Staff Attorney, Department of Commerce and Insurance, 25th Floor, Tennessee Tower, 312 Eighth Avenue North. Nashville, TN 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-76

SELF-INSURING ASSOCIATIONS AND NON-PROFIT BUSINESS COALITIONS FOR HEALTH

NEW RULES

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0780-1-76-.01 PURPOSE AND SCOPE.

The purpose of this Chapter is to regulate the offering of health benefits by employers of the same trade or professional association and non-profit business coalitions for health that choose to self-insure. The provisions of this Chapter shall apply to self-insured qualified multiple employer welfare arrangements that are established or maintained in the State of Tennessee.

Authority: T.C.A. §56-26-204(b).

0780-1-76-.02 DEFINITIONS.

- (1) “Allowable Benefit” means a benefit to provide medical, surgical, or hospital care or benefits.
- (2) “Claims Liability” means the total of all incurred claims for allowable benefits under a self-funded qualified multiple employer welfare arrangement that is not reimbursed or reimbursable by stop-loss insurance, subrogation, or other sources.
- (3) “Commissioner” means the Commissioner of Commerce and Insurance.
- (4) “Health Benefit Plan” or “Plan” means a policy, contract, certificate or agreement offered by a multiple employer welfare arrangement for or to reimburse any of the costs of health care services. “Health benefit plan” includes accident only, credit health, dental, vision, Medicare supplement, or long-term care coverage issued as a supplement to liability insurance; automobile medical payment insurance; short-term and catastrophic health insurance policies; and a policy that pays on a cost-incurred basis. “Health benefit plan” does not include worker’s compensation or similar insurance.
- (5) “Multiple Employer Welfare Arrangement” has the meaning given in 29 U.S.C. 1002.
- (6) “Person” means any natural or artificial person including, but not limited to, an individual, partnership, association, trust, or corporation.
- (7) “Qualified Actuary” means an individual who;
 - (a) Is a member in good standing of the American Academy of Actuaries;
 - (b) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;
 - (c) Is familiar with the valuation requirements applicable to life and health insurance companies; and
 - (d) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
 1. (i) Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; or
 - (ii) Been found guilty of fraudulent or dishonest practices; or

- (iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary; or
 - (iv) Submitted to the Commissioner during the past five (5) years an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provision of this chapter including standards set by the Actuarial Standards Board; or
 - (v) Resigned or been removed as an actuary within the past five (5) years as a result of failure to adhere to generally acceptable actuarial standards; and
- (8) “Qualified Multiple Employer Welfare Arrangement” is a multiple employer welfare arrangement that also meets the conditions of either subparagraph (a) or (b) below:
- (a) Consists of ten (10) or more employers of the same trade or professional association that:
 - 1. (i) Has been actively in existence for at least five (5) years;
 - (ii) Has been formed and maintained in good faith for purposes other than obtaining insurance;
 - (iii) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee); and
 - (iv) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; or
 - (b) Consists of ten (10) or more employers of the same non-profit business coalition for health that:
 - 1. (i) Has been actively in existence for at least five (5) years;
 - (ii) Has been formed and maintained in good faith for purposes other than obtaining insurance;
 - (iii) Does not condition membership in the coalition on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee); and
 - (iv) Does not make health insurance coverage offered through the coalition available other than in connection with a member of the coalition.
- (9) “Self-funded Qualified Multiple Employer Welfare Arrangement” or “Arrangement” means a qualified multiple employer welfare arrangement that does not provide for payment of benefits solely through a policy of insurance issued by one or more authorized insurance companies.
- (10) “Surplus” means the excess of assets of a self-funded qualified multiple employer welfare arrangement minus the liabilities of the arrangement.
- (11) “Tennessee Insurance Law” means Tenn. Code Ann. “ 56-1-101, *et seq.*, as well as any rules promulgated thereunder.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.03 CERTIFICATE OF AUTHORITY REQUIRED.

- (1) A person may not establish or maintain a self-funded qualified multiple employer welfare arrangement in this State without a certificate of authority issued to the arrangement by the Commissioner.
- (2) A self-funded qualified multiple employer welfare arrangement is deemed established or maintained in this State if:
 - (a) One (1) or more of the employer members participating in the arrangement is domiciled or maintains its principal place of business in this State;
 - (b) The arrangement solicits an employer that is domiciled in this state or has its principal headquarters or principal administrative offices in this state; or
 - (c) The arrangement is principally located in this state.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.04 AUTHORITY TO ACT AS A SELF-FUNDED QUALIFIED MULTIPLE EMPLOYER WELFARE ARRANGEMENT.

- (1) The Commissioner may not issue a certificate of authority to a self-funded qualified multiple employer welfare arrangement unless the arrangement establishes to the satisfaction of the Commissioner that:
 - (a) Employers participating in the arrangement are members of either the same trade or professional association or a non-profit coalition for health;
 - (b) Employers or employees participating in the arrangement exercise direct control over the arrangement;
 1. (i) Direct control exists if the employer or employees participating in the arrangement have the right to elect at least seventy-five percent (75%) of the individuals designated in the arrangement's organizational documents as having control over the operations of the arrangement and the individuals designated in the arrangement's organizational documents in fact exercise control over the operation of the arrangement;
 - (ii) Use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operations of the arrangement;
 - (c) The arrangement provides only allowable benefits;
 - (d) The arrangement has adequate facilities and competent personnel, as determined by the Commissioner, to service the health benefit plan or has contracted with an administrator licensed or exempt for licensure under Title 56, Chapter 6, Part 8, to service the health benefit plan;

- (e) The arrangement does not solicit participation in the arrangement from the general public, except the arrangement may employ or independently contract with a licensed insurance producer who may be paid a commission or other remuneration to enroll employers in the arrangement;
- (f) The arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company;
- (g) The arrangement has deposited with the Commissioner a bond in an amount to be determined by the Commissioner, to be used for the payment of claims in the event the arrangement becomes insolvent and has submitted to the Commissioner a written plan of operation that, in the discretion of the Commissioner, ensures the financial integrity of the arrangement;
- (h) The arrangement is not in a hazardous financial condition;
 - 1. (i) In determining whether an arrangement is in a hazardous financial condition, the Commissioner may consider the following:
 - (A) The financial statements of the arrangement or any employer participating in the arrangement;
 - (B) Types and levels of stop-loss insurance coverage, including attachment points of the coverage;
 - (C) Whether a deposit is required for each employee covered under the arrangement equal to at least one month's cost of providing benefits under the arrangement;
 - (D) The experience of the individuals who will be involved in the management of the arrangement, including employees, independent contractors, and consultants; and
 - (E) Other factors the Commissioner considers relevant to determining whether the arrangement is in a hazardous financial condition, including, but not limited to, those standards enumerated in Rule 0780-1-66-.03.
 - (2) The Commissioner may require that the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement require that employers participating in the arrangement are liable for a pro rata share of all liabilities of the arrangement that are unpaid.
 - (3) The arrangement shall maintain both specific and aggregate stop-loss insurance coverage covering one hundred percent (100%) of claims in excess of the attachment points recommended by a qualified actuary.

Authority: *T.C.A. §56-26-204(b).*

0780-1-76-.05 APPLICATION FOR A CERTIFICATE OF AUTHORITY.

- (1) To apply for a certificate of authority, an arrangement shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a fee as set under Tenn. Code Ann. 'ð 56-4-101(a)(1),

showing its name, the location of its home office, its date of organization, its state of domicile, and additional information that the Commissioner may reasonably require in order to determine an arrangement's qualifications to obtain a certificate of authority hereunder.

- (2) The application shall be submitted together with:
- (a) A copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement;
 - (b) A copy of each summary plan description of the arrangement filed or required to be filed with the United States Department of Labor, including any amendments to each description;
 - (c) Evidence of coverage of or letter of intent to participate executed by at least ten (10) employers providing allowable benefits;
 - (d) Financial statements for the preceding five (5) fiscal years or for such lesser period as such applicant shall have been in existence, and similar information covering the period from the end of such person's last fiscal year, if the information is available.
 - (i) The financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual.
 - (e) Proof that the arrangement maintains and will continue to maintain fidelity bonds required by the United States Department of Labor under 29 U.S.C. 1001-1461 (Employee Retirement Income Security Act of 1974);
 - (f) A copy of any stop-loss insurance policies maintained or proposed to be maintained by the arrangement;
 - (g) Biographical reports, on forms prescribed by the National Association of Insurance Commissioners, evidencing the general trustworthiness and competence of each individual who is serving or who will serve as a managing employee or fiduciary of the arrangement;
 - (h) A notarized statement executed by an officer of the arrangement certifying, to the best knowledge and belief of the officer, that the information provided in the application is true and correct and that the arrangement is in compliance with the requirements in
 - (i) 29 U.S.C. 1001-1461 (Employee Retirement Income Security Act of 1974) or a statement of any requirements with which the arrangement is not in compliance and a statement of proposed corrective action; and
 - (ii) Rule 0780-1-76-.06.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.06 MINIMUM SURPLUS.

A self-funded qualified multiple employer welfare arrangement shall establish and maintain surplus equal to the greater of the following:

- (1) Thirty percent (30%) of the unpaid claims liability of the arrangement; or
- (2) The amount recommended and certified by a qualified actuary.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.07 INVESTMENTS.

A self-funded qualified multiple employer welfare arrangement shall maintain an amount at least equal to eighty-five percent (85%) of its net admitted assets on a statutory basis in the following:

- (1) Cash and cash equivalents;
- (2) The fully insured portion of a bank deposit when the insurance is provided by a solvent agency of the United States government or by collateral;
- (3) A certificate of deposit issued by a bank or other financial institution whose deposits qualify for Federal Deposit Insurance Corporation protection; provided, if the Commissioner determines that the amount of the certificate of deposit purchased by an insurer in any one bank is not a sound investment, the Commissioner may require the insurer to liquidate that portion found to be an unsound investment;
- (4) A share of savings account of a savings and loan or building and loan association, to the extent that an account is insured by the Federal Deposit Insurance Corporation; or
- (5) A rated credit instrument that is issued, assumed, guaranteed, or insured by the United States or Canada or by a government-sponsored enterprise of the United States or Canada if the instrument is assumed, guaranteed, or insured by the United States or Canada or is otherwise backed or supported by the full faith and credit of the United States or Canada.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.08 CONTRIBUTION RATES.

- (1) A self-funded qualified multiple employer welfare arrangement shall establish and maintain contribution rates that fund the greater of:
 - (a) The amount recommended and certified by a qualified actuary in order for the self-funded qualified multiple employer welfare arrangement to remain financially solvent; or
 - (b) The sum of projected claims liability for the year, plus all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in the surplus of the arrangement for all prior years, minus an amount equal to the surplus of the arrangement in excess of the minimum required level of surplus.
- (2) A self-funded qualified multiple employer welfare arrangement shall establish and maintain contribution rates that are not excessive, inadequate, or unfairly discriminatory.

- (3) A self-funded qualified multiple employer welfare arrangement shall, before use, file with the Commissioner:
 - (a) A rate or fee of any kind to be charged a participating employer or employee;
 - (b) Every rating manual, schedule, plan, rule, or formula; and
 - (c) Any modification to the rating manual, schedule, plan, rule or formula.
- (4) The Commissioner shall disapprove a contribution rate or fee submitted under paragraph (3) of this rule that does not meet the requirements of paragraphs (1) and (2) of this section or is in any respect not in compliance with or in violation of law.
- (5) A filing under paragraph (3) of this rule must state the effective date and must provide a comprehensive description of the coverage.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.09 REPORTING REQUIREMENTS.

- (1) A self-funded qualified multiple employer welfare arrangement shall file with the Commissioner on or before June 1 of each year on the National Association of Insurance Commissioner's annual health blank, a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31, including:
 - (a) A statement of financial condition accompanied by the certificate of an independent public accountant the effect that such statement presents fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with statutory accounting procedures.
 - (b) A statement of change in financial condition for the year accompanied by an actuarial opinion by a qualified actuary that includes:
 - (i) A certification that the unpaid claim liability of the arrangement meets the requirements of Chapter 0780-1-69.
 - (ii) The recommended level of specific and aggregate stop-loss insurance the arrangement should maintain; and
 - (iii) A description of the actuarial soundness of the arrangement, including any recommended actions the arrangement should take to improve its actuarial soundness;
 - (c) A statement of the arrangement's contribution rates for the next year;
 - (d) A report showing the number of participating employers and number of covered lives at the end of the year and contributions received during the year in the state;
 - (e) Any information required by statute or rule relating to the arrangement's compliance with the requirements in Tenn. Code Ann. ' 56-7-109; and

- (f) Additional information the Commissioner determines is necessary in order to determine the financial integrity of the arrangement.
- (2) A self-funded qualified multiple employer welfare arrangement shall, within sixty (60) days after the end of each quarter, file with the Commissioner, on the National Association of Insurance Commissioner's quarterly health blank, a full and true statement of its financial condition, transactions, and affairs as of the preceding quarter, including
 - (a) A statement of financial condition;
 - (b) A statement of change in financial condition for the period since the end of the prior year;
 - (c) A report showing the number of participating employers and number of covered lives at the end of the quarter and contributions received during the quarter in the state, and
 - (d) Additional information the Commissioner determines is necessary in order to determine the financial integrity of the arrangement.
- (3) A self-funded qualified multiple employer welfare arrangement shall file with the Commissioner a copy of the arrangement's Internal Revenue Service Form 5500, including all attachments to the form.
- (4) A self-funded qualified multiple employer welfare arrangement shall, before execution, file with the Commissioner a copy of any stop-loss or excess policies or agreements maintained or proposed to be maintained by the arrangement. The arrangement shall verify with the Commissioner that all such policies or agreements have been filed and approved by the Commissioner.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.10 CONSUMER INFORMATION NOTICE.

A self-funded qualified multiple employer welfare arrangement must provide a written notice to each participating employee at the time that coverage becomes effective. The notice must state the following in a clear and conspicuous manner, and in at least ten (10) point type:

- (1) The health coverage is issued by a self-funded qualified multiple employer welfare arrangement;
- (2) Coverage and benefits provided under a self-funded qualified multiple employer welfare arrangement are not protected by the Tennessee Life and Health Insurance Guaranty Association; and
- (3) If the self-funded qualified multiple employer welfare arrangement does not pay expenses that are eligible for payment under the plan for any reason, the employer or employee covered by the plan will be responsible for the payment of those expenses.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.11 EXAMINATIONS AND INVESTIGATIONS.

- (1) The Commissioner has the authority to examine the affairs of any self-funded qualified multiple employer welfare arrangement that has applied for or received a certificate of authority under this Chapter in order

to determine the financial condition of the arrangement or to determine whether the arrangement is in compliance with all insurance laws applicable to it. Such examinations shall be conducted at least once every five (5) years, and all expenses of such examinations shall be assessed against the arrangement.

- (2) The Commissioner has the authority to investigate the affairs of any person acting as a multiple employer welfare arrangement, or any person associated or affiliated with a multiple employer welfare arrangement, that offers or proposes to offer health benefits in this State in order to determine whether such person is in violation of the Tennessee Insurance Law or this Chapter.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.12 LICENSING OF AGENTS.

- (1) Any person soliciting membership in a self-insurance multiple employer welfare arrangement must be licensed by the Commissioner as an insurance producer in the line of accident and health insurance in order to do so.
- (2) No person shall solicit membership in a self-insurance multiple employer welfare arrangement unless the arrangement has obtained a certificate of authority from the Commissioner pursuant to the terms of this Chapter.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.13 TAXES.

The tax imposed on a self-funded qualified multiple employer welfare arrangement shall be the same amount imposed upon accident and health insurers under Tenn. Code Ann. ‘ 56-4-205.

Authority: T.C.A.. §56-26-204(b) and (c).

0780-1-76-.14 MISREPRESENTATION PROHIBITED.

No person shall make a material misrepresentation or omit to state a material fact in connection with the offering of health benefits by a self-funded qualified multiple employer welfare arrangement to members of a trade or professional association, or of a non-profit business coalition for health.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.15 PROHIBITED USE OF CERTAIN NAMES.

A self-funded qualified multiple employer welfare arrangement may not use a name that includes the words “insurance,” “casualty,” “surety,” “health and accident,” “mutual,” or other terms descriptive of an insurer or insurance business. A self-funded qualified multiple employer welfare arrangement may not have or use a name that is the same as or so similar to that of another self-funded qualified multiple employer welfare arrangement or insurer that the name is likely to mislead the public.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.16 APPLICABILITY OF OTHER PROVISIONS.

- (1) In addition to the provisions contained or referred to in this chapter, the following chapters and provisions of Title 56 also apply with respect to self-funded qualified multiple employer welfare arrangements to the extent applicable:
 - (a) Tenn. Code Ann. Title 56, Chapter 7 to the extent the sections contained therein apply to health and accident insurers; and
 - (b) Tenn. Code Ann. Title 56, Chapter 26, Part 1.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.17 EXEMPTIONS.

An arrangement that is licensed by the Commissioner as a staff leasing company and has received approval from the Commissioner of its plan for self-insuring health benefits pursuant to the provisions of Tenn. Code Ann. §62-43-113(d) and the guidelines established thereunder shall be exempt from the requirements of this Chapter.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.18 CEASE AND DESIST ORDERS.

- (1) Except as otherwise provided in paragraph (2) of this rule, after notice and opportunity for a hearing, the Commissioner may issue an order requiring a self-funded qualified multiple employer welfare arrangement to cease and desist from engaging in any act or practice found to be in violation of any applicable statute or provision under the Tennessee Insurance Law, this Chapter, or any order of the Commissioner.
- (2) Whenever the Commissioner determines that a self-funded qualified multiple employer welfare arrangement has been established or maintained in this State in violation of Rule 0780-1-76-.03, the Commissioner may issue a cease and desist order ex parte and without prior notice being given to the arrangement; provided, however, that the Commissioner shall provide the arrangement notice and the opportunity for hearing to challenge the issuance of the cease and desist order.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.19 PENALTIES.

- (1) After notice and an opportunity for a hearing, the Commissioner may revoke or suspend a self-funded qualified multiple employer welfare arrangement's certificate of authority upon a finding that:
 - (a) The arrangement is in a hazardous financial condition;
 - (b) The arrangement fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon the arrangement at the time when such obligations are owed;
 - (c) The arrangement fails to cooperate in any examination or investigation initiated by the Commissioner pursuant to Rule 0780-1-76-.11.

- (d) The arrangement fails to comply with any of the provisions of this rule, or with any lawful order of the Commissioner, including those issued pursuant to Rule 0780-1-76-.18, within the time prescribed;
 - (e) The arrangement fraudulently obtained its certificate of authority;
 - (f) The arrangement made a misrepresentation in the application for the certificate of authority; or
 - (g) The arrangement has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise in its fiduciary capacities.
- (2) With respect to any arrangement licensed or required to be licensed under this Chapter, and in addition to or in lieu of any action taken in Rule 0780-1-76-.18 or paragraph (1) of this rule, the Commissioner may assess a civil penalty against such arrangement in an amount not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each separate violation of a statute or rule applicable to the arrangement. Each day of continued violation constitutes a separate violation.

Authority: T.C.A.. §56-26-204(b).

0780-1-76-.20 APPLICABILITY OF THE INSURERS REHABILITATION AND LIQUIDATION ACT.

The proceedings authorized by Title 56, Chapter 9 may be applied to self-funded qualified multiple employer welfare arrangements. A self-funded qualified multiple employer welfare arrangement established or maintained in this State shall be included in the definition of the term "insurer" found in Tenn. Code Ann. §56-9-103(12) for all such purposes.

Authority: T.C.A.. §56-26-204(b).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2003.
(01-27)

THE TENNESSEE BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 15th day of April, 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 0460-1-.02, Fees, is amended by deleting subparagraphs (1) (a) and (1) (b) in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (1) (c) and renumbering the remaining subparagraphs accordingly, so that as amended, the new subparagraphs (1) (a), (a) (b), and (1) (c) shall read:

- (1) (a) Licensure Application Fee – Payable each time an application for licensure is filed. This fee also applies to limited, educational limited, dual degree and criteria (reciprocity) licensure applicants. \$ 150.00

- (1) (b) Limited and Educational Limited Licensure Fee – Payable each time an application for a limited or an educational limited license is filed. This fee is to be paid in addition to the licensure application fee. \$ 100.00

- (1) (b) Criteria (Reciprocity) Licensure Fee – Payable Each time an application for a criteria (reciprocity) license is filed. This fee is to be paid in addition to the licensure application fee. \$ 150.00

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-110.

Rule 0460-1-.13, Repealed, is amended by deleting the catchline and substituting instead the following new catchline, and is further amended by adding the following language as new paragraphs (1), (2), and (3):

0460-1-.13 ETHICS.

- (1) For licensed dentists, the Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, the American Dental Association (ADA) Principles of Ethics and Code of Professional Conduct as it may, from time to time, be amended.
 - (a) In the case of a conflict the state law, rules or position statements shall govern. Violation of the ADA Principles of Ethics and Code of Professional Conduct shall be cause for disciplinary action as provided in Rule 0460-1-.06.
 - (b) A copy of the ADA Principles of Ethics and Code of Professional Conduct may be obtained by contacting the American Dental Association at 211 East Chicago Avenue, Chicago, IL 60611, or by phone at (312) 440-2500, or on the Internet at <http://www.ada.org>.

- (2) For licensed dental hygienists, the Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, the American Dental Hygienists' Association (ADHA) Code of Ethics for Dental Hygienists as it may, from time to time, be amended.
 - (a) In the case of a conflict the state law, rules or position statements shall govern. Violation of the ADHA Code of Ethics for Dental Hygienists shall be cause for disciplinary action as provided in Rule 0460-1-.06.
 - (b) A copy of the ADHA Code of Ethics for Dental Hygienists may be obtained by contacting the American Dental Hygienists' Association at 444 North Michigan Avenue, Suite 3400, Chicago, IL 60611, or by phone at (312) 440-8900, or on the Internet at <http://www.adha.org>.

- (3) For registered dental assistants, the Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, the American Dental Assistants Association (ADAA) Code of Ethics and the ADAA Creed for Dental Assistants as they may, from time to time, be amended.
 - (a) In the case of a conflict the state law, rules or position statements shall govern. Violation of the ADAA Code of Ethics or the ADAA Creed for Dental Assistants shall be cause for disciplinary action as provided in Rule 0460-1-.06.
 - (b) A copy of the ADAA Code of Ethics and the ADAA Creed for Dental Assistants may be obtained by contacting the American Dental Assistants Association at 203 North LaSalle Street, Chicago, IL 60601-1225, or by phone at (312) 541-1550, or on the Internet at <http://www.dentalassistant.org>.

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

Rule 0460-2-.01, Licensure Process, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1), (2), (3), (4), and (5) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (6), (7), (8), (9), (10), (11), (12), (13), (14), and (15) in their entirety, so that as amended, the new catchline and the new paragraphs (1), (2), (3), (4), and (5) shall read:

0460-2-.01 LICENSURE PROCESS - BY EXAM, BY CRITERIA (RECIPROCITY), AND INACTIVE VOLUNTEER.

- (1) The process for obtaining licensure by exam or by criteria (reciprocity) is as follows:
 - (a) An applicant shall obtain a Board application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form and this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously.
 - (b) An applicant shall cause to be submitted directly, from a dental school, college or university approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association, to the Board Administrative Office a certificate of graduation containing the institution's Official Seal and which shows the following:
 1. The applicant's transcript; and
 2. The degree and diploma conferred, or a letter from the Dean of the educational institution attesting to the applicant's eligibility for the degree and diploma if the last term of dental school has not been completed at the time of application. However, no license shall be issued until official notification is received in the Board Administrative Office that the degree and diploma have been conferred.
 - (c) An applicant shall submit a signed "passport" style photograph taken within the preceding twelve (12) months.
 - (d) An applicant shall submit evidence of good moral character. Such evidence shall include at least two (2) letters attesting to the applicant's character from dental professionals on the signator's letterhead.
 - (e) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.
 - (f) An applicant shall submit the required fees as provided in Rule 0460-1-.02 (1).
 - (g) An applicant shall disclose the circumstances surrounding any of the following:
 1. Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 2. The denial of licensure application by any other state or the discipline of licensure in any state.
 3. Loss or restriction of hospital privileges.
 4. Any other civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any country's or state's statutory, common, or case law.
 5. Failure of any dental licensure examination.

- (h) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
 - (i) An applicant shall indicate whether the applicant is physically capable of performing the procedures included in the practice of dentistry and if not, make explanation.
- (2) In addition to completing the process described in paragraph (1), an applicant for licensure by exam:
- (a) Shall cause to be submitted a certificate of successful completion of the examinations for licensure as governed by Rule 0460-2-.05; and
 - (b) If an applicant for licensure by exam has ever held a license to practice dentistry in any other state or Canada, the applicant shall submit or cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each such licensing board which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive.
- (3) In addition to completing the process described in paragraph (1), an applicant for licensure by criteria (reciprocity):
- (a) Shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each such licensing board that has currently or has ever granted authority to practice dentistry which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time it became inactive; and
 - (b) Shall demonstrate intent to actively practice or teach in Tennessee by submitting proof of employment as a dentist or by submitting proof of starting a private dental practice; and
 - (c) Shall demonstrate that he/she has not failed previously any exam required by Rule 0460-2-.05, if passage of such exams had ever been attempted; and
 - (d) Shall demonstrate that he/she has practiced dentistry in another state or states for at least five (5) years by submitting proof of employment as a dentist or by submitting proof of having had a private dental practice; or
 - (e) Shall demonstrate that he/she has taught in an American Dental Association accredited institution for at least five (5) years; or
 - (f) Shall demonstrate any combination of subparagraphs (d) and (e) for at least five (5) years; or
 - (g) Shall demonstrate that he/she has practiced dentistry in another state or states for at least two (2) years by submitting proof of employment as a dentist or by submitting proof of having had a private dental practice, and shall cause to be submitted a certificate of successful completion of an examination administered by another state, as provided in T.C.A. § 63-5-110(b)(6)(D); or
 - (h) Shall demonstrate that he/she has taught in an American Dental Association accredited institution for at least two (2) years, and shall cause to be submitted a certificate of successful completion of the examinations for licensure as governed by Rule 0460-2-.05 or an examination administered by another state as provided in T.C.A. § 63-5-110(b)(6)(E); or

- (i) Shall demonstrate any combination of subparagraphs (g) and (h) for at least two (2) years.
- (4) Inactive Volunteer Licensure - Applicants who intend to practice dentistry exclusively without compensation on patients who receive dentistry services from organizations granted a determination of exemption pursuant to Section 501(c)(3) of the Internal Revenue Code may obtain an inactive volunteer license to do so as follows:
 - (a) Applicants who currently hold a valid Tennessee license to practice dentistry issued by the Board pursuant to this rule which is in good standing must:
 - 1. Retire their active licenses pursuant to the provisions of Rule 0460-2-.09 (1) and:
 - 2. Have submitted to the Board Administrative Office directly from the qualified organization proof of the determination of exemption issued pursuant to Section 501 (c)(3) of the Internal Revenue Code; and
 - 3. Certify that they are practicing dentistry exclusively on the patients of the qualified entity and that such practice is without compensation.
 - (b) Applicants who do not currently hold a valid Tennessee license to practice dentistry must comply with all provisions of paragraphs (1) and all provisions of paragraph (2) or (3) of this rule.
 - (c) Inactive volunteer licensees are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by Rules 0460-2-.08 and .09. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses. Under no circumstance shall an inactive volunteer licensee be renewed without payment of the required biennial renewal fee as stated in Rule 0460-1-.02, and completion of the annual continuing education requirement as stated in Rule 0460-1-.05 (1).
- (5) Application review and licensure decisions required by this rule shall be governed by Rule 0460-1-.04.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-110, 63-5-111, and 63-5-132.

Rule 0460-2-.03, Educational Licensure Process, is amended by deleting the catchline and the introductory language in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (1), (2), (3), (4), (5), (6), and (7) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (8), (9), (10), (11), (12), (13), (14), and (15) in their entirety, so that as amended, the new catchline, the new introductory language, and the new paragraphs (1), (2), (3), (4), (5), (6), and (7) shall read:

0460-2-.03 LIMITED AND EDUCATIONAL LIMITED LICENSURE PROCESS. Any dentist who has completed the requirements set forth in this rule may be issued a limited license for the practice of dentistry in American Dental Association accredited institutions, or dental education programs, or in federally-designated health professional shortage areas, or may be issued an educational limited license to practice dentistry under the auspices of a dental educational institution. The educational limited license limits the dentist's location and activity to teaching and practice in programs offered only through the educational institution. It does not authorize independent private practice in any location.

- (1) The process for obtaining a limited or an educational limited license is as follows:

- (a) An applicant shall obtain an application form from the Board Administrative Office, respond truthfully and completely to every question or request for information contained in the form and submit it along with all documentation and fees required by the form or this rule to the Board Administrative Office. It is the intent of this rule that all activities necessary to accomplish the filing of the required documentation be completed prior to filing a licensure application and that all documentation be filed simultaneously.
 - (b) An applicant shall submit a signed “passport” style photograph taken within the preceding twelve (12) months.
 - (c) An applicant must submit evidence of good moral character and competence. Such evidence shall include at least two (2) letters attesting to the applicant’s character and ability from licensed dentists on the signator’s letterhead.
 - (d) An applicant shall submit proof of United States or Canadian citizenship or evidence of being legally entitled to live and work in the United States. Such evidence may include copies of birth certificates, naturalization papers, or current visa status.
 - (e) An applicant shall submit the required fees as provided in Rule 0460-1-.02 (1).
 - (f) An applicant shall submit evidence of current training in cardiopulmonary resuscitation issued by a Board approved training organization.
 - (g) An applicant shall indicate whether the applicant is physically capable of performing the procedures included in the practice of dentistry and if not, make explanation.
 - (h) An applicant shall disclose the circumstances surrounding any of the following:
 - 1. Conviction of any criminal law violation of a country, state or municipality, except minor traffic violations.
 - 2. The denial of licensure application by any other state or the discipline of licensure in any state.
 - 3. Loss or restriction of hospital privileges.
 - 4. Any other civil suit judgment or civil suit settlement in which the applicant was party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under any country’s or state’s statutory, common, or case law.
 - 5. Failure of any dental licensure examination.
 - (i) An applicant shall submit or cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from the licensing board(s) of every state in which the applicant has ever been licensed which indicates the applicant either holds a current active license and whether it is in good standing, or held a license which is currently inactive and whether it was in good standing at the time became inactive.
- (2) In addition to completing the process described in paragraph (1), an applicant for limited licensure:

- (a) Shall cause a transcript from a dental school, college or university to be sent directly from the institution to the Board Administrative Office that shows the equivalent of the D.D.S. or the D.M.D. degree was conferred and carries the official seal of the institution; and
 - (b) Shall cause to be submitted, directly from Educational Credential Evaluators, Inc. (www.ece.org) to the Board Administrative Office, a "Course-By-Course Evaluation Report" that indicates the applicant has successfully completed the equivalent of four (4) years of study in a dentistry program in the United States; and
 - (c) Shall cause to be submitted, directly from the educational institution to the Board Administrative Office, certification of successful completion of a graduate training program in a recognized specialty branch of dentistry from an advanced specialty program accredited by the American Dental Association; and
 - (d) Shall cause to be submitted, directly from the examination agency to the Board Administrative Office, certification of successful completion of the National Board examination; and
 - (e) Shall cause, if practice is to occur in American Dental Association accredited institutions or dental education programs, the Dean or Director of the dental educational institution at which the applicant is to be employed to submit upon application for licensure and renewal of licensure, on behalf of the applicant, a letter of recommendation for limited licensure and a copy of the contract employing the applicant as a faculty member at the institution; or
 - (f) Shall submit when applying for licensure and when applying for renewal of licensure, if practice is to be in a federally-designated health professional shortage area, proof of employment as a dentist or proof of starting/maintaining a private dental practice.
- (3) In addition to completing the process described in paragraph (1), an applicant for educational limited licensure:
- (a) Shall cause a transcript from a dental school, college or university to be sent, directly from the institution to the Board Administrative Office, that shows the degree was conferred and carries the official seal of the institution; and
 - (b) Shall cause the Dean or Director of the dental educational institution at which the applicant is to be employed to submit, on behalf of the applicant, a letter of recommendation for educational limited licensure and a copy of the contract employing the applicant as a faculty member at the institution; and
 - (c) Shall possess an active license which is in good standing in at least one (1) other state that was active for at least one (1) year prior to application; and
 - (d) If the applicant has ever taken the any regional testing agency examination or any other Board-approved examination as provided in rule 0460-2-.05, an application will not be approved unless and/or until a certification is submitted which indicates that the applicant achieved passing scores on all parts of the examination.
- (4) When a limited or educational limited licensee is employed at an educational institution or program, the licensee shall cause the Dean or Director of the educational institution or program to immediately notify the Board in writing of the termination of the licensee's employment and the reasons therefore delivered to the Board Administrative Office. Such notification terminates the licensee's authority to practice in Tennessee.

- (5) When a limited licensee is no longer practicing in a federally-designated health professional shortage area, the licensee shall immediately notify the Board in writing. Such notification terminates the licensee's authority to practice in Tennessee.
- (6) Limited and educational limited licensees are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by Rules 0460-2-.08 and .09. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses. Under no circumstance shall an inactive volunteer licensee be renewed without payment of the required biennial renewal fee as stated in Rule 0460-1-.02, and completion of the annual continuing education requirement as stated in Rule 0460-1-.05 (1).
- (7) Application review and licensure decisions required by this rule shall be governed by Rule 0460-1-.04.

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-110, and 63-5-111.

Rule 0460-2-.05, Examination, is amended by deleting the introductory language in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (9), so that as amended, the new introductory language and the new paragraph (9) shall read:

0460-2-.05 EXAMINATION. All persons intending to apply for licensure as a dentist in Tennessee must successfully complete the examinations provided by this rule, except for educational limited licensure applicants and dual degree licensure applicants who need not complete any licensure examinations, limited licensure applicants who must successfully complete only the National Board examination, criteria (reciprocity) applicants who are qualifying pursuant to Rule 0460-2-.01 (3) (d), (e), or (f) and need not complete any licensure examinations, and criteria (reciprocity) applicants who are qualifying pursuant to Rule 0460-2-.01 (3) (g), (h), or (i) and who have passed a regional testing agency examination or an examination given by another state as provided in T.C.A. § 63-5-111(b)(6)(D) or (E). Completion of the required examinations is a prerequisite for application for licensure. Certification of successful completion must be submitted as part of the application process.

- (9) If an applicant has successfully completed a clinical board examination administered by the state and is applying for licensure pursuant to Rule 0460-2-.01 (3) (g), (h), or (i), it is that applicant's responsibility to submit documentation substantiating the appropriateness of such examination. The Board shall make the final decision to accept or reject such examination.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-110, and 63-5-111.

Rule 0460-2-.11, Regulated Areas of Practice, is amended by deleting paragraphs (5) and (6) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (7) in its entirety, so that as amended, the new paragraphs (5) and (6) shall read:

- (5) Unauthorized Practice - Any dentist who permits any dental hygienist or dental assistant to perform any acts or services other than those specifically assignable or delegable pursuant to T.C.A. §§ 63-5-108(b) and 63-5-108(c) and/or Rule 0460-3-.09 and/or 0460-4-.01 and 0460-4-.08 may be subject to discipline pursuant to T.C.A. § 63-5-116(a).
- (6) Universal Precautions for the Prevention of HIV Transmission - The Board adopts Rules 1200-14-3-.01 through 1200-14-3-.03 inclusive, of the Department of Health, and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-5-105, 63-5-107, 63-5-108, 63-5-116, and 63-5-124.

NEW RULE**TABLE OF CONTENTS**

0460-2-.12 Dental Records

0460-2-.12 DENTAL RECORDS.

- (1) Purposes – The purposes of these rules are:
 - (a) To recognize that dental records are an integral part of the practice of dentistry as defined in T.C.A. § 63-5-108.
 - (b) To give dentists, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
 - (c) To recognize that a distinction exists between a dentist’s records for a patient receiving services in the dentist’s office and those records created by the dentist for that patient for purposes of services provided in a hospital as defined by T.C.A. § 68-11-302 (4) and that the distinction exists regardless of the fact that the dentist may also be an employee of the hospital or of a dental group employed or owned by the hospital.
- (2) Conflicts – As to dental records, these rules should be read in conjunction with the provisions of T.C.A. §§ 63-2-101 and 102, and are not intended to conflict with those statutes in any way. Those statutes, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.
- (3) Applicability – These rules regarding dental records shall apply only to those records, the information for which was obtained by dentists or their professionally licensed employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.
- (4) Dental Records –
 - (a) Duty to Create and Maintain Dental Records – As a component of the standard of care and of minimal competency a dentist must cause to be created and cause to be maintained a dental record for every patient for whom he or she, and/or any of his or her professionally licensed or registered supervisees, performs services or provides professional consultation.
 - (b) Duty to Release Dental Records – A dentist shall not withhold records for non-payment of current or prior dental services.
 - (c) Notice – Anywhere in these rules where notice is required to be given to patients of any dentist, that notice shall be required to be issued within thirty (30) days of the date of the event that triggers the notice requirement, and may be accomplished by public notice.
 - (b) Distinguished from Hospital Dental Records - The dental records covered by these rules are separate and distinct from those records generated for the patient by the dentist during the course of providing dental services for the patient in a hospital as defined by T.C.A. § 68-11-

302 (4) regardless of whether the dentist is an employee or a member of a group practice which is employed or owned by a hospital.

1. The provisions of T.C.A. Title 68, Part 11, Chapter 3 govern dental records generated in a hospital as defined by T.C.A. § 68-11-302 (4).
2. The dental records covered by these rules are those:
 - (i) That are created prior to the time of the patient's admission to, or confinement and/or receipt of services in, a hospital as defined by T.C.A. § 68-11-302 (4), hospital emergency room and/or hospital outpatient facility, and/or
 - (ii) That are created after the patient's discharge from a hospital as defined by T.C.A. § 68-11-302 (4), emergency rooms or outpatient facility.
 - (iii) That are created during the practice of dentistry as defined by T.C.A. § 63-5-108 outside of a hospital as defined by T.C.A. § 68-11-302 (4), emergency room or outpatient facility.
3. Even though the records covered by these rules may, of necessity, reference provision of services in the hospital setting and the necessary initial work-up and/or follow-up to those services, that does not make them "hospital records" that are regulated by or obtainable pursuant to T.C.A. Title 68, Part 11, Chapter 3.

(a) Content –

1. All dental records, or summaries thereof, produced in the course of the practice of dentistry for all patients, shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2).
2. All dental records, or summaries thereof, produced in the course of the practice of dentistry for all patients, shall include such additional information that is necessary to ensure that a subsequent reviewing or treating dentist can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.
3. X-rays are considered to be part of the dental records.
4. At a minimum, all dental patient records shall include:
 - (i) A charting of the patient's teeth conditions.
 - (ii) Concise description and treatment date for services performed.
 - (iii) Concise medical history.
 - (iv) Notation of dates, types, and amounts of pharmaceuticals prescribed or dispensed.
 - (v) Readable x-rays when required for services rendered.

(f) Transfer -

1. Records of Dentists upon Death or Retirement - When a dentist retires or dies while in practice, patients seen by the dentist in his/her office during the immediately preceding thirty-six (36) months shall be notified by the deceased dentist's or retiring dentist's authorized representative and urged to find a new dentist and be informed that upon authorization, copies of the records will be sent to the new dentist.
2. Records of Dentists upon Departure from a Group - The responsibility for notifying patients of a dentist who departs from a group practice shall be governed by the dentist's employment contract.
 - (i) Whomever is responsible for that notification must notify patients seen by the dentist in his/her office during the immediately preceding thirty-six (36) months of his/her departure.
 - (ii) Except where otherwise governed by provisions of the dentist's contract, those patients shall also be notified of the dentist's new address and offered the opportunity to have copies of their dental records forwarded to the departing dentist at his or her new practice. The dental group shall not withhold the dental records of any patient who has authorized its transfer to the departing dentist or any other dentist.
 - (iii) The choice of dentists in every case should be left to the patient, and the patient should be informed that upon authorization his/her records will be sent to the dentist of the patient's choice.
3. Sale of a Dental Practice - A dentist or the estate of a deceased dentist may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the dentist's patient records. Therefore, the transfer of records of patients is subject to the following:
 - (i) The dentist (or the estate) must ensure that all patient records are transferred to another dentist or entity that is held to the same standards of confidentiality as provided in these rules.
 - (ii) Patients seen by the dentist in his/her office during the immediately preceding thirty-six (36) months shall be notified that the dentist (or the estate) is transferring the practice to another dentist or entity who will retain custody of their records and that, at their written request, the copies of their records will be sent to another dentist or entity of their choice.
4. Abandonment of Records – For purposes of this section of the rules death of a dentist shall not be considered as abandonment.
 - (i) It shall be a prima facie violation of T.C.A. § 63-5-124 (a) (1) for a dentist to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.
 - (ii) Upon notification that a dentist in a practice has abandoned his practice and has not made provision for the security, transfer, or establishment of a secure method of patient access to their records, patients should take all reasonable steps to obtain their dental records by whatever lawful means available and should immediately seek the services of another dentist.

- (g) Retention of Dental Records – Dental records shall be retained for a period of not less than ten (10) years from the dentist’s or his supervisees’ last professional contact with the patient except for the following:
1. Dental records for incompetent patients shall be retained indefinitely.
 2. Dental records of minors shall be retained for a period of one (1) year after the minor reaches the age of majority or ten (10) years from the date of the dentist’s or his supervisees’ last professional contact with the patient, whichever is longer.
 3. Notwithstanding the foregoing, no dental record involving services which are currently under dispute shall be destroyed until the dispute is resolved.
- (h) Destruction of Dental Records -
1. No dental record shall be singled out for destruction other than in accordance with established office operating procedures.
 2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
 3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
 4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient dental records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient’s dental records.
- (5) Violations – Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. §§ 63-5-124 (a) (1), and/or (2).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-5-105, 63-5-108, 63-5-121, and 63-5-124.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of January, 2003.
(01-07)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
WATER QUALITY CONTROL BOARD**

There will be a series of hearings before the Water Quality Control Board to consider the promulgation of amendments of rules pursuant to the Tennessee Water Quality Control Act of 1977, Sections 69-3-105 (1), 69-3-105 (3), and 69-3-107 (11). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the following times and locations:

DATE	SITE	HEARING LOCATION	TIME
March 17	Jackson	Main Conference Room Jackson Environmental Assistance Center 362 Carriage House Drive	2:00 p.m. CST
March 17	Jackson	Main Conference Room Jackson Environmental Assistance Center 362 Carriage House Drive	7:00 p.m. CST
March 18	Memphis	Main Conference Room Memphis Environmental Assistance Center Suite E-645, Perimeter Park 2510 Mount Moriah Road	2:00 p.m. CST
March 18	Memphis	Main Conference Room Memphis Environmental Assistance Center Suite E-645, Perimeter Park 2510 Mount Moriah Road	6:30 p.m. CST
March 24	Nashville	Ruth Neff Conference Room 17th Floor, L & C Tower 401 Church Street	1:30 p.m. CST
March 25	Franklin	Auditorium Williamson County Administrative Complex 100 West Main Street	7:00 p.m. CST
March 27	Chattanooga	Chattanooga State Office Building First Floor Auditorium 540 McCallie Avenue	2:00 p.m. EST
March 27	Chattanooga	Chattanooga State Office Building First Floor Auditorium 540 McCallie Avenue	6:30 p.m. EST
March 31	Knoxville	Main Conference Room Knoxville Environmental Assistance Center 2700 Middlebrook Pike	1:30 p.m. EST
March 31	Knoxville	Goins Building Auditorium Pellissippi State Technical Institute Pellissippi Parkway	7:00 p.m. EST

DATE	SITE	HEARING LOCATION	TIME
April 1	Kingsport	Conference Room Warriors Path State Park Hemlock Road	2:00 p.m. EST
April 1	Elizabethton	Conference Room Sycamore Shoals State Park 1651 West Elk Avenue	7:00 p.m. EST
April 3	Cookeville	Biology Department Pennybaker Hall, Room 128 Tennessee Tech University	7:00 p.m. EST

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Water Pollution Control to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Environment and Conservation's ADA Coordinator at 7th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243, (615) 532-0059.

For a copy of this notice of rulemaking hearing, contact: Greg Denton, Division of Water Pollution Control, 7th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee, 37243-1534, 615-532-0699.

SUMMARY OF PROPOSED RULES

The Tennessee Water Quality Control Board has initiated the rulemaking process to make revisions to Tennessee's General Water Quality Criteria and Stream-use Classifications for Surface Waters. The federal Clean Water Act requires that these rules be reviewed and revised every three years. These regulations classify surface waters for one or more of seven designated uses and establish narrative or numerical criteria to protect water quality for each use. They also have specific provisions for the protection of high quality waters.

CHAPTER 1200-4-4 USE CLASSIFICATIONS FOR SURFACE WATERS.

Very few changes are being proposed for the use classifications for stream segments. The majority of these changes involve the moving of streams or stream segments from "unnamed" status to "named" status. For these streams, classified uses will be specifically identified.

CHAPTER 1200-4-3 GENERAL WATER QUALITY CRITERIA.

This rulemaking involves all of the sections of the rule dealing with the water quality criteria. A large number of changes are being proposed for the water quality criteria. Most of these changes are updates to reflect current science and other changes recommended by the US EPA. Proposed revisions to this Chapter include, but are not limited to:

- (1) Updates to numeric criteria for protection of fish and aquatic life. In each case, acute and chronic values will be updated to reflect the current national criteria recommended by the Environmental Protection Agency. EPA has also updated some of the factors used to calculate the criteria for metals with toxicities based on the hardness of the ambient water.

- (2) Identification of regional interpretations of narrative fish and aquatic life criteria for the following substances or conditions: nitrate+nitrite, total phosphorus, and biological integrity. These regional water quality goals are based on the interpretation data collected at reference streams over several years. A new narrative criteria specific to in-stream habitat is also proposed.
- (3) Clarification of existing numeric fish and aquatic life criteria for dissolved oxygen and pH to include regional-based exceptions. Reference stream data were used to identify these regional water quality goals.
- (4) Under the recreation use, delete the existing criteria for total fecal coliform, leaving only the *E. coli* criteria as the primary pathogen indicator of human health risk. Create a single-sample maximum criteria for *E. coli* based on EPA guidance.
- (5) Change from a 30Q2 low flow basis for applying recreation criteria to a 30Q5 low flow basis, as recommended by EPA.
- (6) Revisions to the Antidegradation Statement including clarification of the implementation procedure. Revisions would include formalized requirements for alternatives analysis and clarified public participation opportunities. Additionally, information requirements are identified for applicants requesting a determination from the Water Quality Control Board to allow degradation into Tier II waters on the basis of economic and social necessity.

Authority: *Tennessee Water Quality Control Act of 1977, Sections 69-3-105 (1), 69-3-105 (3), and 69-3-107 (11).*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2003. (01-31)

**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 17th day of March, 2003.

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

Rules of the Department of Finance and Administration is amended by adding Chapter 1200-13-15 Rules of the TennCare administrative Hearing Unit which shall read as follows:

**CHAPTER 1200-13-15
ADMINISTRATIVE HEARING UNIT**

TABLE OF CONTENTS

1200-13-15-.01	Definitions	1200-13-15-.15	Order of Proceedings
1200-13-15-.02	Scope	1200-13-15-.16	Initial Order
1200-13-15-.03	Authority of Hearing Officer	1200-13-15-.17	The Final Order
1200-13-15-.04	Subpoenas for Evidence and Witnesses	1200-13-15-.18	Default and Uncontested Proceedings
1200-13-15-.05	Filing and Service of Pleadings and Other Materials	1200-13-15-.19	Record of Oral Proceedings
1200-13-15-.06	Time	1200-13-15-.20	Ex Parte Communication
1200-13-15-.07	Place	1200-13-15-.21	Notice of Right to Appeal the Initial Order
1200-13-15-.08	Commencement of Contested Case Proceedings	1200-13-15-.22	Notice of Right to Petition for Reconsideration of the Initial Order
1200-13-15-.09	Service of Notice of Hearing	1200-13-15-.23	Notice of Right to Appeal the Final Order
1200-13-15-.10	Representation by Counsel	1200-13-15-.24	Notice of Right to Petition for Reconsideration of the Final Order
1200-13-15-.11	Pre-Hearing Conference	1200-13-15-.25	Effect on the Final Order
1200-13-15-.12	Discovery	1200-13-15-.26	Grounds for Reconsideration
1200-13-15-.13	Rules of Evidence	1200-13-15-.27	Clerical Mistakes
1200-13-15-.14	Examination of Case File		

1200-13-15-.01 DEFINITIONS.

- (1) **Administrative Hearing.** A contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq., to allow an applicant for TennCare Standard to appeal an action by the agency or the agency's designee regarding all matters of eligibility for TennCare Standard. An evidentiary hearing held before an impartial hearing officer or administrative law judge, at TennCare's discretion, who renders an initial order pursuant to T.C.A. § 4-5-314.
- (2) **Administrative Law Judge.** An impartial employee or official of the Department of State Administrative Procedures Division who is licensed to practice law and authorized by law to conduct contested case proceedings pursuant to T.C.A. § 4-5-301.
- (3) **Administrative Procedures Act.** The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.
- (4) **Agency.** The Bureau of TennCare.
- (5) **APA.** The Administrative Procedures Act.
- (6) **APD.** The Department of State Administrative Procedures Division.
- (7) **Appeal.** The process of obtaining an administrative hearing as a result of an Agency action regarding matters affecting eligibility for TennCare Standard, or the process of obtaining review of an initial order by the Commissioner's Designee or judicial review of a final order.

- (8) Appellant. An individual who is dissatisfied with an Agency action regarding matters affecting eligibility for TennCare Standard and who requests an administrative hearing, or is dissatisfied with the results of an administrative hearing and requests review of an initial or final order.
- (9) Applicant. An individual who submits an application for TennCare Standard health coverage or the person who acts as an authorized representative for the applicant.
- (10) Burden of Proof. A preponderance of the evidence. The minimum evidentiary standard required in order to prevail in an administrative hearing.
- (11) Bureau. The Bureau of TennCare.
- (12) Bureau of TennCare. The administrative unit of TennCare which is responsible for the administration of TennCare, the program administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (13) Commissioner. The chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located.
- (14) Commissioner's Designee. A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for stay or reconsideration of final orders.
- (15) Contested Case Proceeding. A proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.
- (16) Department. The Tennessee Department of Finance and Administration.
- (17) Fair Hearing. An administrative hearing.
- (18) Findings of Fact. The factual findings following the administrative hearing, enumerated in the initial and/or final order, which includes a concise and explicit statement of the underlying facts of record to support the findings.
- (19) Final Order. The initial order becomes a final order without further notice if not appealed, or if the initial order is appealed pursuant to T.C.A. § 4-5-315, the Commissioner or Commissioner's Designee may render a final order. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included.
- (20) Hearing. An administrative hearing.
- (21) Hearing Officer. An impartial official of the Department of Finance and Administration or the Department of State Administrative Procedures Division who is designated by the Commissioner or his/her designated representative to conduct administrative hearings. The person so designated shall have no direct involvement in the action under consideration prior to the filing of the appeal.
- (22) Initial Order. The decision of the hearing officer or administrative law judge following an administrative hearing. The initial order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It shall include a statement of any circumstances under which

the initial order may, without further notice, become a final order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included.

- (23) Notice of Hearing. The pleading filed with the TennCare Administrative Hearing Unit by the agency upon receipt of an appeal. It shall contain a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307 (b).
- (24) Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (25) Person. Any individual.
- (26) Petitioner. The party who initiated the contested case proceeding and who usually bears the burden of proof.
- (27) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as, a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (28) Respondent. The party who is responding to the action brought by the petitioner, usually the Agency.
- (29) TAHU. The TennCare Administrative Hearing Unit.
- (30) TennCare Administrative Hearing Unit. The office established within the Department of Finance and Administration to provide Hearing Officers for the purpose of conducting Administrative Hearings of appeals of agency actions regarding matters affecting eligibility under TennCare Standard.
- (31) TennCare Standard. That part of the TennCare Program which provides health coverage for Tennessee residents who:
 - (a) Are uninsured, do not have access to group health insurance (either directly or indirectly through another family member), and whose income is less than the poverty level for which Federal and State appropriations are made available; or
 - (b) Are uninsured, do not have or have access to group health insurance (either directly or indirectly through another family member), and have proven that s/he meets the appropriate Medical Eligibility criteria for his/her circumstances; or
 - (c) Are uninsured children under age nineteen (19), whose family income is less than 200% poverty, who have access to insurance but have not purchased it, and who have been continuously enrolled in this category since December 31, 2001; or
 - (d) Had Medicare as of December 31, 2002 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of "uninsurable" in effect at that time. Effective January 1, 2003 these individuals are eligible only for the TennCare Standard pharmacy benefit package; or

- (e) Were enrolled as dislocated workers on June 30, 2002, have not purchased other insurance, and have incomes that do not exceed the amount established for redetermination during the waiver transition period in rule 1200-13-14-.02(7).
- (32) TennCare Standard Enrollee (Enrollee). An individual covered under TennCare Standard.
- (33) TRCP. The Tennessee Rules of Civil Procedure.

1200-13-15-.02 SCOPE.

- (1) These rules shall govern all administrative hearings conducted for the purpose of determining TennCare Standard eligibility and related issues, and will be relied upon by hearing officers and administrative law judges conducting such hearings. Prior to determining TennCare Standard eligibility, an applicant's TennCare Medicaid eligibility must be denied. TennCare Medicaid eligibility appeals shall be conducted by the Department of Human Services pursuant to Chapter 1240-5 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) In any procedural situation that arises that is not specifically addressed by these rules, reference may be made to the following authorities in the order listed for guidance as to the proper procedure to follow: the Tennessee Uniform Administrative Procedures Act and the rules promulgated thereunder, and the Tennessee Rules of Civil Procedure.

1200-13-15-.03 AUTHORITY OF HEARING OFFICER.

- (1) The Commissioner has placed responsibility for administrative hearings in the TennCare Administrative Hearing Unit and the Department of State Administrative Procedures Division. The hearing officer or administrative law judge is vested with full authority to conduct the hearing process in accordance with these rules.
- (2) The hearing officer or administrative law judge shall have the authority to do the following:
 - (a) Schedule and conduct the hearing;
 - (b) Administer oaths;
 - (c) Issue subpoenas;
 - (d) Rule upon offers of proof;
 - (e) Regulate the course of the hearing;
 - (f) Write an initial order stating his/her decision; and
 - (g) Rule on petitions for reconsideration or stay of the initial order or final order.

1200-13-15-.04 SUBPOENAS FOR EVIDENCE AND WITNESSES.

The parties shall have the power in an administrative hearing to require the attendance of witnesses and the production of books, records, papers, or other tangible things as may be necessary and proper for the purpose of the administrative hearing. It shall be the responsibility of the hearing officer or administrative law judge to issue the subpoena, but it shall be the responsibility of the parties involved in the case to request the issuance of a subpoena. The hearing officer or administrative law judge at the request of any party shall issue signed subpoenas in blank. Parties shall complete and serve their own subpoenas. Subpoenas may be served at any place within the State by certified mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.

1200-13-15-.05 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings and any other materials required to be filed by a time certain as the result of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the TAHU or the APD, as designated, within the required time period.
- (2) Upon the involvement of either the TAHU or the APD in any contested case, all pleadings and other materials required to be filed or submitted prior to the administrative hearing shall be filed with the designated office, where they will be stamped with the date and hour of their receipt.
- (3) Petitions for review of an initial order and for reconsideration or stay of a final order may be filed with the agency or either the TAHU or the APD, as designated in the order.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1200-13-15-.12.
- (5) Copies of any and all materials filed with the agency or the TAHU or the APD in a contested case shall also be served upon all parties, or upon their counsel, and shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or by hand delivery.

1200-13-15-.06 TIME.

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- (2) When an act is required or allowed to be done at or within a specified time, the opposing party shall have the same amount of time to respond as the initiating party, and the hearing officer or administrative law judge may not permit the act to be done late.
- (3) Due to mandatory Federal Court timeframes, if an appellant requests a continuance the deadlines shall be extended by like period of time.

1200-13-15-.07 PLACE.

In the discretion of the hearing officer or administrative law judge, all or part of the administrative hearing, including any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

1200-13-15-.08 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

- (1) Commencement of Action. A contested case proceeding shall be commenced by appeal of an affected person from an agency action.
- (2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the agency.
- (3) Filing of Documents. When a contested case is commenced the agency shall provide the TAHU or the APD with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency concerning that particular case. Legible copies may be filed in lieu of originals.
- (4) Answer. The party may respond to the charges set out in the notice or other original pleading by filing a written answer with the agency.
- (5) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing officer or administrative law judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory violation without original service and running of times applicable to service of the original notice.
- (6) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing officer or administrative law judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing officer or administrative law judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments.

1200-13-15-.09 SERVICE OF NOTICE OF HEARING.

- (1) In any case in which a party has requested a hearing from an agency, a copy of the notice of hearing shall be delivered to the party by first class mail, postage prepaid, at the address required to be kept current with the agency by T.C.A. §§71-5-106(1) and 110(c)(1) and the address provided with the request for hearing, if different from the address on file with the agency. Delivery is presumed to occur in five (5) days from the date of mailing.

1200-13-15-.10 REPRESENTATION BY COUNSEL.

- (1) The agency shall notify all parties in a contested case proceeding of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (2) Any party to a contested case proceeding may be advised and represented, at the party's own expense, by a licensed attorney.
- (3) Any party to a contested case proceeding may represent him/herself or may participate through a duly authorized representative.
- (4) A party to a contested case proceeding may be represented by a non-attorney, as specifically permitted by federal or state law.

1200-13-15-.11 PRE-HEARING CONFERENCE.

- (1) In any action set for hearing the hearing officer or administrative law judge assigned to hear the case, upon his/her own motion or upon motion of one of the parties or their qualified representative, may direct the parties and/or the attorneys for the parties to appear before him/her for a conference to consider:
 - (a) The simplification of issues;
 - (b) The necessity or desirability of amendments to the pleadings;
 - (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 - (d) The limitation of the number of expert witnesses; or
 - (e) Such other matters as may aid in the disposition of the action.
- (2) The assigned hearing officer or administrative law judge shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by the admissions or agreements of the parties. Such order when entered controls the subsequent course of the contested case proceeding, unless modified at the hearing to prevent manifest injustice.
- (3) If a pre-hearing conference is not held, the assigned hearing officer or administrative law judge may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.
- (4) Unless precluded by law, informal disposition may be made of any appealed case by stipulation, agreed settlement, consent order or default.

1200-13-15-.12 DISCOVERY.

Any party to a contested case proceeding shall have the right to reasonable discovery pursuant to T.C.A. § 4-5-311.

- (1) Parties are encouraged to attempt to achieve any necessary discovery informally. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.

- (2) Upon motion of a party or upon the hearing officer or administrative law judge's own motion, the hearing officer or administrative law judge may order that discovery be completed by a certain date.
- (3) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion shall:
 - (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- (4) The hearing officer or administrative law judge shall decide any motion relating to discovery pursuant to the APA and the rules promulgated thereunder or the TRCP.
- (5) Other than as provided in subsection (3) above, discovery materials need not be filed with either the agency or, as designated, the TAHU or the APD.

1200-13-15-.13 RULES OF EVIDENCE.

- (1) The hearing officer or administrative law judge shall admit and give probative effect to evidence admissible in a Court and may also admit evidence which preserves probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The hearing officer or administrative law judge shall give effect to the rules of privilege recognized by law and shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.
- (2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency.
- (3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.
- (4) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.

1200-13-15-.14 EXAMINATION OF CASE FILE.

Any party to a contested case proceeding shall have the right to examine agency manuals and the contents of the case file with respect to the matter being contested, and all documents and records used as evidence, at a reasonable time either before the date of the hearing or during the hearing. Any party or his/her representative may copy entries or documents to be introduced at the hearing as supporting evidence.

1200-13-15-.15 ORDER OF PROCEEDINGS.

- (1) Order of proceedings for the hearing of contested cases:
 - (a) Hearing officer or administrative law judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) Hearing is called to order by the hearing officer or administrative law judge.
 - (c) Hearing officer or administrative law judge introduces self and gives a very brief statement of the nature of the proceedings.
 - (d) Hearing officer or administrative law judge asks if the petitioner is represented by counsel, and if so, counsel is introduced. The hearing officer or administrative law judge then introduces the respondent's counsel and any other officials who may be present at the hearing.
 - (e) The hearing officer or administrative law judge states what documents the record contains.
 - (f) The hearing officer or administrative law judge swears the witnesses.
 - (g) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding and are asked to leave the hearing room. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room, and the agency or any other party that is a corporation or other artificial person may have one appropriate individual, who may also be a witness, act as its party representative.
 - (h) Any preliminary motions, stipulations, or agreed orders are entertained.
 - (i) Opening statements are allowed by both the petitioner and the respondent.
 - (j) Moving party (usually the petitioner) calls witnesses and questioning proceeds as follows:
 1. (Petitioner) moving party questions.
 2. (Respondent) other party cross-examines.
 3. (Petitioner) moving party redirects.
 4. (Respondent) other party re-cross-examines.
 5. Further questions by petitioner and respondent. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)
 - (k) Other party (usually the Respondent) calls witnesses and questioning proceeds as follows:
 1. (Respondent) other party questions.
 2. (Petitioner) moving party cross-examines.
 3. (Respondent) other party redirects.

4. (Petitioner) moving party re-cross-examines.
5. Further questions by respondent and petitioner. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)
 - (l) Petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
 - (m) Closing arguments are allowed to be presented by the petitioner and by the respondent.
 - (n) The hearing officer or administrative law judge announces the decision or takes the case under advisement.
- (2) The parties are informed that an initial order will be written and sent to the parties and that the initial order will inform the parties of their appeal rights.
- (3) Subparagraph (1) of this rule is intended to be merely a general outline as to the conduct of an administrative hearing and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

1200-13-15-.16 INITIAL ORDER.

- (1) The initial order issued by the hearing officer or administrative law judge shall be based exclusively on evidence introduced at the administrative hearing and shall contain the elements set forth at section .01.
- (2) The initial order shall be served on all parties of record within ninety (90) days of the agency receipt of the appeal.
- (3) The initial order shall be reviewed by a designated representative of the Commissioner prior to the entry of a final order.
- (4) The initial order shall include a statement of the available procedures and time limits for seeking reconsideration and/or appeal to the Commissioner.

1200-13-15-.17 THE FINAL ORDER.

- (1) The final order shall be issued pursuant to the authority of the Commissioner of the Department of Finance and Administration or his/her designated representative. The final order shall be binding upon all parties.
- (2) The final order in a contested case shall be in writing and shall be made available to each party.
- (3) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.

1200-13-15-.18 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.

- (a) The failure of a party to attend or participate in a prehearing conference, hearing or other stage of a contested case proceeding after due notice thereof is cause for holding such party in default pursuant to T.C.A. §§ 4-5-309. Failure to comply with any lawful order of the hearing officer or administrative law judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case proceeding and thereby be cause for a holding of default.
 - (b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.
 - (c) The hearing officer or administrative law judge determines whether the service of notice is sufficient as a matter of law, according to rule 1200-13-15-.09.
 - (d) If the notice is held to be adequate the hearing officer or administrative law judge shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1200-13-15-.09. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned if the absent party has the burden of proof or conducted without the participation of the absent party if the moving party bears the burden of proof.
 - (e) The hearing officer or administrative law judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after service of such notice of default, may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing officer or administrative law judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. §4—5—317.
- (2) Effect of Entry of Default.
- (a) Upon entry into the record of the default of the petitioner at a contested case proceeding, the appeal shall be dismissed as to all issues on which the petitioner bears the burden of proof.
 - (b) Upon entry into the record of the default of the respondent at a contested case hearing, the matter shall be tried as uncontested as to such respondent.
- (3) Uncontested Proceeding. When the matter is tried as uncontested, the petitioner has the burden of establishing its allegations by a preponderance of the evidence presented.

1200-13-15-.19 RECORD OF CONTESTED CASE PROCEEDINGS.

A record (which may consist of a tape or similar electronic recording) shall be made of all oral contested case proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be transcribed by the agency at its expense. This record shall be maintained for a period of time, not less than three years.

1200-13-15-.20 EX PARTE COMMUNICATION.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an appeal shall not communicate directly or indirectly in connection with any issue involved in such proceeding with any person except upon notice and opportunity for all parties to participate, except an agency member may communicate with other members of the agency, members of the Attorney General's staff or his personal assistants.

1200-13-15-.21 NOTICE OF RIGHT TO APPEAL THE INITIAL ORDER.

Written notice of the right to appeal is to accompany the initial order mailed to the parties. A petition for appeal from an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order. If an initial order is subject to both a timely petition for reconsideration and appeal, the petition for reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the petition for reconsideration.

1200-13-15-.22 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE INITIAL ORDER.

Written notice of the right to file a petition for reconsideration shall accompany the initial order mailed to the parties. A petition for reconsideration of an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order, stating the specific grounds upon which relief is requested. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

1200-13-15-.23 NOTICE OF RIGHT TO APPEAL THE FINAL ORDER.

Written notice of the right to appeal and the right to request a stay shall accompany the final order mailed to the parties. A petition for judicial review of a final order under TCA §4-5-322 must be filed with the Chancery Court having jurisdiction within sixty (60) days after the date of the final order, or if a petition for reconsideration of the final order is granted, within sixty (60) days of the entry of the final order disposing of the petition. The filing of a petition for reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted.

1200-13-15-.24 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

Written notice of the right to petition for reconsideration of the final order is to accompany the final order to the parties. Any party who feels aggrieved by a final order may, within fifteen (15) days following the effective date of the order, file a written petition for reconsideration with the TAHU or APD, as designated, which shall specify in detail the reasons for the request. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

1200-13-15-.25 EFFECT ON THE FINAL ORDER.

The filing of a petition for reconsideration of the final order shall not supersede or delay the effective date of the final order and said order shall take effect on the date entered by the TAHU or APD, as designated, and shall continue in effect until such petition shall be granted or until said order shall be superseded, modified, or set aside in a manner provided by law.

1200-13-15-.26 GROUNDS FOR RECONSIDERATION

- (1) The hearing officer, administrative law judge or the commissioner's designee who rendered the initial or final order which is the subject of the petition, shall, within twenty (20) days of receiving the petition, enter a written order either: denying the petition; granting the petition and setting the matter for further proceedings; or, granting the petition and issuing a new order, initial or final. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied at the expiration of the twenty (20) day period.
- (2) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record. No new evidence shall be introduced, unless the party proposing such evidence shows good cause for failure to introduce the evidence in the original proceeding.

1200-13-15-.27 CLERICAL MISTAKES.

Prior to any appeal being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions, may be corrected by the hearing officer or administrative law judge at any time, on his/her own initiative or on motion of any party, and after such notice, if any, as the hearing officer or administrative law judge may require. The entering of a corrected order will not effect the dates of the original appeal time period.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-112, 71-5-134 and Executive Order No. 23

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of January, 2003.
(01-28)

THE TENNESSEE STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS - 0660

There will be a hearing before the Tennessee State Board of Funeral Directors and Embalmers to consider the promulgation of amendments to rules pursuant to Tenn. Code Ann. § 62-5-203. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee at 10:00 A.M. (CST) on the 8th day of April, 2003.

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

For a copy of this notice of rulemaking hearing, contact: Arthur J. Giles, Executive Director, Tennessee State Board of Funeral Directors and Embalmers, 500 James Robertson Parkway, 2nd Floor, Davy Crockett Tower, Nashville, Tennessee 37243 at (615) 741-2378.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0660-2 EXAMINATIONS

AMENDMENTS

Chapter 0660-2 Examinations is amended by deleting the abbreviation "T.C.A." wherever it appears in the chapter and substituting instead the abbreviation "Tenn. Code Ann."

Authority: T.C.A. §62-5-203.

Rule 0660-2-.02 Grading Procedures is amended by deleting the text of the rule in its entirety and substituting the following language so that, as amended, the rule shall read as follows:

0660-2-.02 GRADING PROCEDURES.

- (1) Examinations will be graded by the private testing agency which prepared them. Such agency shall send the grades on examinations given by the Board directly to the Executive Director of the Board.
- (2) The examination results shall be presented to the Board of Funeral Directors and Embalmers by the Executive Director of the Board at the first meeting of the Board following receipt of the grades by the Executive Director.
- (3) The passing grade for both the funeral director and embalmer examinations shall be seventy-five percent (75%).
- (4) An examination maybe re-graded upon the examinee's written request, accompanied by payment of cost incurred by the board for providing such service.

Authority: T.C.A. §62-5-203 and 62-5-301.

**CHAPTER 0660-8
CIVIL PENALTIES**

AMENDMENTS

Chapter 0660-8 Civil Penalties is amended by deleting the abbreviation "T.C.A." wherever it appears in the chapter and substituting instead the abbreviation "Tenn. Code Ann."

Authority: T.C.A. §62-5-203.

Paragraph (1) of rule 0660-8-.01 Civil Penalties is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (1) shall read as follows:

- (1) With respect to any person, partnership, firm, association, or corporation required to be licensed by the Board, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule or order pertaining to the Board in accordance with the following schedule:

Violation	Penalty
Tenn. Code Ann. § 62-5-107	Not more than \$1000 nor less than \$200
Tenn. Code Ann. § 62-5-108	Not more than \$1000 nor less than \$25
Tenn. Code Ann. § 62-5-317(a)	(1) Not more than \$1000 nor less than \$20
	(2) Not more than \$1000 nor less than \$25
	(3) Not more than \$1000 nor less than \$25
	(4) Not more than \$1000 nor less than \$25
	(5) Not more than \$1000 nor less than \$200
	(6) Not more than \$1000 nor less than \$10
	(7) Not more than \$1000 nor less than \$25
	(8) Not more than \$1000 nor less than \$300
	(9) Not more than \$1000 nor less than \$25
Tenn. Code Ann. § 62-5-317(b)	(1) Not more than \$1000 nor less than \$300
	(2) Not more than \$1000 nor less than \$100
	(3) Not more than \$1000 nor less than \$300
	(4) Not more than \$1000 nor less than \$300

- (5) Not more than \$1000
nor less than \$300
- (6) Not more than \$1000
nor less than \$200
- (7) Not more than \$1000
nor less than \$25
- (8) Not more than \$1000
nor less than \$300
- (9) Not more than \$1000
nor less than \$25
- (10) Not more than \$1000
nor less than \$200
- (11) Not more than \$1000
nor less than \$25
- (12) Not more than \$1000
nor less than \$25
- (13) Not more than \$1000
nor less than \$25
- (14) Not more than \$1000
nor less than \$25
- (15) Not more than \$1000
nor less than \$10
- (16) Not more than \$1000
nor less than \$10
- (17) Not more than \$1000
nor less than \$10

Authority: T.C.A.. §§56-1-308 and 62-5-203 and Chapter 809 of the Public Acts of 2002.

**CHAPTER 0660-3
FEES**

REPEALS

Rule 0660-3-.05 Reciprocal Licenses is repealed.

Authority: T.C.A. § 62-5-203.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2003.
(01-24)

**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, 63-1-105, 63-1-106, 68-29-103, 68-29-104, 68-29-105, 68-29-109, 68-29-111, 68-29-116, 68-29-117, 68-29-118, 68-29-119, 68-29-120, 68-29-127, and 68-29-129. 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 1st day of April, 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-.01 Definitions, is amended by deleting paragraphs (11) and (16) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (24) in its entirety, and is further amended by adding the following language as new, appropriately numbered paragraphs, so that as amended, the new paragraphs (11) and (16), and the new, appropriately numbered paragraphs shall read:

- (11) Internationally Trained. Having graduated from a degree program and/or a laboratory training program outside of the United States or its territories.
- (16) Medical Laboratory Professionals. Individuals, including the medical laboratory director, supervisor, technologist, or technician, but not including medical laboratory assistants, trainees or other persons employed by a medical laboratory to perform clerical or other administrative responsibilities involving no laboratory testing.
- () CLIA. The Clinical Laboratory Improvements of 1988 as found in 42 CFR 493.
- () Full Time Work Experience. A minimum of thirty (30) hours per week or one thousand five hundred sixty (1,560) hours per year.
- () May. Discretionary.
- () Moderate Complexity. A clinical laboratory test category assigned by CLIA-88 based on the test characteristics. See CFR 493.17.

- () “Point of Care” laboratory testing. Laboratory testing performed by health care personnel/professionals not licensed by the Medical Laboratory Act, T.C.A. §§ 68-29-101, et seq., and is performed outside the duly licensed laboratory and under the auspices of a laboratory required to be licensed by the Department, pursuant to the Medical Laboratory Act.
- () Regionally Accredited College/University. An institution of higher education accredited by one of the following United States Associates of Colleges and Schools: Middle States, The Northwest, North Central, New England, Southern or Western.
- () Shall. Mandatory.
- () Special Analyst. Any person performing a singular or limited type of medical laboratory test or group of tests, such as, but not limited to, blood gases or pH tests, Andrology Embryology, Cytology, Molecular Diagnostics, Cytogenetics, Toxicology, Flow Cytometry, Virology, Histocompatibility/Immunogenetics, on human specimens but who is not trained to perform the broad range of tests required of licensed medical laboratory personnel.
- () “Waived” laboratory tests. Those tests, as defined by the Board, which may be performed by individuals not licensed under the Medical Laboratory Act, and which pose no reasonable risk of harm if performed incorrectly.

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

Rule 1200-6-1-.02 Scope of Practice, is amended by deleting the language of this rule in its entirety and substituting instead the following language, so that as amended, the new language of this rule shall read:

1200-6-1-.02 SCOPE OF PRACTICE. Medical laboratory personnel and special analysts may perform clinical laboratory tests that provide vital information to the medical practitioner for the purpose of determining the nature, cause and extent of the patient’s medical condition.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-104, 68-29-105, 68-29-117, and 68-29-118.

Rule 1200-6-1-.03 Necessity of Licensure, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) All medical laboratory personnel and special analysts in Tennessee must hold current Tennessee licensure, unless specifically exempt by statute or rules promulgated by the Board.
- (2) No person shall act as a medical laboratory director, supervisor, technologist, technician, laboratory trainee or a special analyst and accept a specimen for laboratory examination unless such person has obtained a license and is registered to act in such capacity by the board; provided, that this section shall not apply to pathologists certified by the American Board of Pathology, or any other person recognized by the board as having special qualifications, or any other physician duly licensed and registered to practice medicine in the state of Tennessee.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-104, 68-29-105, 68-29-116, 68-29-127, and 68-29-129.

Rule 1200-6-1-.05 Procedures for Personnel License, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) To perform the duties of a medical laboratory director, medical laboratory supervisor, medical laboratory technologist, medical laboratory technician, or special analyst, a person must possess a lawfully issued license from the Board.
 - (a) An application packet may be obtained from the Board's administrative office or from the Board's website at www.tennesseeanytime.org.
 - (b) It is the intent of these rules that all requests for supporting documentation including but not limited to transcripts, training and national certification be completed prior to filing an application.
 - (c) It is the applicant's responsibility to request an official college transcript from the college registrar's office to be sent directly to the Board's administrative office. The transcript must show that the degree has been conferred and carry the official seal of the institution. Internationally trained applicants must meet the requirements of Rule 1200-6-1-.05(2)(a).
 - (d) It is the applicant's responsibility to request proof that the laboratory training program from which they graduated is accredited and from what agency. This must be submitted directly from the director of the training program, or a source acceptable to the Board, directly to the administrative office. Applicants trained in the military must present proof of training through official military documentation. Internationally trained applicants must meet the requirements of Rule 1200-6-1-.05(2).
 - (e) It is the applicant's responsibility to request that proof of current national certification/qualification be submitted directly to the Board's administrative office from a certifying body that is acceptable to the Board. The national certification must be in the laboratory specialty in which licensure is being sought.
 - (f) It is the applicant's responsibility to request proof of clinical laboratory work experience from current and previous employers if required. The letter must state the applicants' name, job title and/or description of duties, dates of employment, and the number of hours worked per week.
 - (g) Applications will be accepted throughout the year.
 - (h) An applicant shall respond truthfully and completely to every question or request for information in the application form. The application form must be submitted with all required documentation and fees to the Board's administrative office.
 - (i) An applicant shall submit with the application the nonrefundable application fee and the state regulatory fee as provided in Rule 1200-6-1-.06.
 - (j) An applicant shall submit with the application a signed "passport" type photograph taken within the preceding twelve (12) months. The back of the photo is to be signed by the applicant.
 - (k) Personal resumes are not acceptable and will not be reviewed.
 - (l) An applicant shall disclose the circumstances surrounding any of the following:

1. Conviction of any crime in any country, state, or municipality, except for minor traffic violation.
 2. The denial of licensure or the discipline of a licensee by any other state, country, or municipality.
 3. Loss or restriction of licensure.
 4. Any civil judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under that country's, state's, or municipality's statutory, common, or case law.
- (m) The burden is on the applicant to provide by a preponderance of the evidence that his course work and credentials are equivalent to the Board's requirements.
- (n) Application review and licensure decisions shall be governed by Rule 1200-6-1-.07 and a prerequisite to licensure.
- (o) Compliance with Rule 1200-6-1-.08 is a prerequisite to licensure.
- (p) A license will be issued after all requirements have been met.
- (2) Internationally trained applicants.
- (a) In addition to fulfilling the above requirements in Rule 1200-6-1-.05(1)(a) through (p), an internationally trained applicant must also:
1. Have all educational credentials evaluated by a foreign evaluation company approved by the Board. The credentialing agency must submit directly to the Board's administrative office the results of the evaluation. The evaluation must clearly indicate that the applicant's education is equivalent to that which is required for licensure of United States graduates at the level of licensure being sought. A list of approved credentialing agencies can be obtained from the Board's administrative office.
 2. Submit to the Board's administrative office current documentation of legal entry and right to work in the United States if not a naturalized citizen.
- (b) An internationally trained applicant who is citizen of Mexico or Canada may apply as a professional under the North American Free Trade Agreement (NAFTA) when all federal requirements have been met; and
1. The profession is on the NAFTA list; and
 2. The applicant possesses the specific criteria for that profession; and
 3. The prospective position requires someone in that professional capacity; and
 4. The applicant is going to work for a U.S. employer.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, 68-29-105, 68-29-116, 68-29-117, and 68-29-118.

Rule 1200-6-1-.06 Fees, is amended by adding the following language as new subparagraphs (1) (f), (1) (g), (3) (f), and (3) (g):

- (1) (f) Replacement License Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed “artistically designed” wall license.
- (1) (g) Duplicate Certificate Fee - A non-refundable fee to be paid when an individual requests a duplicate renewal certificate.
- (3) (f) Replacement License
\$ 40.00
- (3) (g) Duplicate Certificate
\$ 25.00

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, 68-29-104, and 68-29-105.

Rule 1200-6-1-.08 Examinations, is amended by adding an introductory sentence, and is further amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (3) and (4), so that as amended, the new introductory sentence and the new paragraphs (1), (2), (3), and (4) shall read:

1200-6-1-.08 EXAMINATIONS. The Board adopts the examination offered by Board approved nationally recognized certifying agencies for each classification of licensure.

- (1) The exam administration schedule is determined by each national certification agency.
- (2) It is the applicant’s responsibility to request the National Certification agency or certified training programs approved by the Board to submit verification to the board administrative office that the applicant is scheduled on a date specified to challenge the exam.
- (3) Applicants that do not successfully pass the nationally certification exam or fail to appear for the examination will need to reschedule with the national certification agency.
- (4) The passing score for the national certification exam is determined by each National Certification agency.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-117, and 68-29-118.

Rule 1200-6-1-.09 Renewal of License, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (b) shall read:

- (1) (b) Methods of Renewal – Licensees may accomplish renewal by one (1) of the following methods:
 - 1. Internet Renewals – Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org
 - 2. Paper Renewals - Licensees who have not renewed their authorization online via the Internet

will have a renewal application form mailed to them at the last address provided by them to the Board prior to the expiration date of their current license. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-104, 68-29-105, and 68-29-119.

Rule 1200-6-1-.14 Trainee Permits, is amended by adding the following language as new paragraph (4):

- (4) A trainee permit is void the day the trainee completes or withdraws from the training program.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-120.

Rule 1200-6-1-.16 Replacement License, is amended by deleting the language of this rule in its entirety and substituting instead the following language as new paragraphs (1) and (2), so that as amended, the new paragraphs (1) and (2) shall read:

- (1) A license holder whose “artistically designed” license has been lost or destroyed may be issued a replacement document upon receipt in the Board’s administrative office of a notarized written request and a photograph of the licensee. Such request shall state the facts concerning the loss or destruction of the original document and accompanied by the required fee, pursuant to Rule 1200-6-1-.06.
- (2) A license holder whose renewal certificate has been lost or destroyed may be issued a replacement document upon receipt in the Board’s administrative office of a notarized written request and a photograph of the licensee. Such request shall state the facts concerning the loss or destruction of the original document and accompanied by the required fee, pursuant to Rule 1200-6-1-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-106, and 68-29-105.

Rule 1200-6-1-.17 Change of Address and/or Name, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:.

- (1) Change of Address. A licensee who has had a change of address shall file in writing with the Board his or her current mailing address, giving both the old and new addresses and new phone number. Such notification should be received in the Board’s administrative office no later than thirty (30) days after such change is effective and must reference the individual’s name, profession, and license number.
- (2) Change of Name. A licensee shall provide a notarized copy of the marriage certificate, divorce decree, or court order indicating a name change within thirty (30) days of the change. The notice shall provide both the old and new name and must reference the individual’s profession, and license number. Under no circumstances shall a licensee change his/her name online via the Internet.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, and 68-29-105.

Rule 1200-6-1-.19 Board Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting subparagraph (1) (c) in its entirety and renumbering the remaining subparagraph accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-105, and 68-29-109.

Rule 1200-6-1-.20 Qualifications and Duties of the Medical Laboratory Director, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (2) and (3) and renumbering the current paragraph (2) as paragraph (4), and is further amended by deleting the renumbered subparagraph (4) (c) and substituting instead the following language, and is further amended by adding the following language as subpart (4) (e) 4. (v), so that as amended, the new paragraphs (1), (2) and (3), the newly renumbered subparagraph (4) (c), and the new subpart (4) (e) 4. (v) shall read:

- (1) Qualifications. It shall not be necessary for an individual who is licensed as a medical laboratory director to be licensed in any other category under these rules. Pathologists and any other person who is duly licensed and registered to practice medicine in the State of Tennessee and boarded by a national boarding agency acceptable to the Board will not be required to obtain a medical laboratory license in addition to their medical license. This license shall be current and in good standing. Individuals that hold an earned doctoral degree (non-medical) are required to obtain a license as a laboratory director from the Board. To be eligible to direct a medical laboratory a person shall meet one (1) or more of the following requirements:
 - (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.
 1. The director of an anatomic laboratory must be certified in anatomic pathology, and may direct a cytopathology, histopathology, or oral pathology laboratory.
 2. The director of a clinical laboratory must be certified in clinical pathology.
 3. The director of a laboratory that conducts anatomic and clinical pathology must be certified in anatomic and clinical pathology.
 - (b) Be a physician licensed in Tennessee and certified by the American Board of Medical Microbiology, The American Board of Clinical Chemistry, The American Board of Bioanalysis, or other certifying boards acceptable to the Board in one or more of the laboratory specialties for which approval for directorship is being sought. Board certifications must be current.
 - (c) Hold an earned doctoral degree in a chemical, physical, biological, or clinical laboratory science, from an accredited institution or equivalent and is certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, The American Board of Bioanalysis, American Board of Medical Laboratory Immunology or other certifying boards acceptable to the Board in one or more of the laboratory specialties for which approval for directorship is being sought. Board certification must be current.
 - (d) Be a physician licensed in Tennessee, who subsequent to graduation has had four (4) years or more experience in pulmonary function. The directorship is limited to blood gas analysis (pH, pO₂, pCO₂) and co-oximetry analysis (measurement of oxygen saturation), and report the measurement(s) to include carboxyhemoglobin, total hemoglobin, oxyhemoglobin, methemoglobin, and sulfhemoglobin on automated instruments.
 1. The phrase “subsequent to graduation” means laboratory training and experience acquired after receipt of the specified degree.
 2. The experience means broad, relevant experience gained in a clinical laboratory located in the United States. The Board will evaluate the experience required for qualification within these rules.

- (e) Hold an earned doctoral degree from an accredited college/university and, in the opinion of the Board, has appropriate work experience in a subspecialty for which there is no national certification. If boarding is available in a closely field, that boarding might be sought. These individuals must obtain national boarding in the subspecialty when it becomes available.
- (2) The Board shall review and approve all director licenses.
- (3) A physician who was qualified and acting as a medical laboratory director at a facility on or before July 16, 1995, may continue acting as the medical laboratory director at that facility. Otherwise, to qualify as a medical laboratory director the individual must meet the minimum licensure requirements stated in Rule 1200-6-1-.20.
- (4) (c) The laboratory director must be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed. The director shall make periodic and documented on-site visits at a minimum of once per month.
- (4) (e) 4. (v) The regional surveyor is notified in the event the proficiency testing scores are unsuccessful. The response form shall be completed to include any corrective action implemented to solve the problem.

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

Rule 1200-6-1-.21 Qualifications and Duties of the Medical Laboratory Supervisor, is amended by deleting subparagraphs (1) (b), (1) (c), and (1) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (b), (1) (c), and (1) (d) shall read:

- (1) (b) The medical laboratory supervisor shall meet one of the following requirements:
 1. Be a physician licensed in Tennessee or hold a doctoral degree from an accredited college/university with chemical, physical, biological, or clinical laboratory science as their major subject. Subsequent to obtaining a doctoral degree the applicant must have at least two (2) years of full time clinical laboratory work experience as defined in Rule 1200-6-1.22 (1) (g) in the area they wish to supervise.
 2. Hold a valid general medical laboratory technologist license in Tennessee or meet one (1) of the requirements under Rule 1200-6-1-.22 (1) (a) 1. through 5. and provide all required documentation in support of that qualification and have at least four (4) years of full time clinical laboratory work experience as defined in Rule 1200-6-1-.22 (1) (g) in the area they wish to supervise.
 3. Hold a valid general medical laboratory technologist license in Tennessee limited to one of the categories of chemistry, hematology, immunohematology, or microbiology or meet one of the requirements under Rule 1200-6-1-.22 (1) (c) and provide all required documentation in support of that qualification and have at least four (4) years of full time clinical laboratory work experience as defined in Rule 1200-6-1-.22 (1) (g) subsequent to qualifying as a technologist. The license shall be limited to the category for which the applicant is qualified.
 4. Hold a valid special analyst license limited to one (1) subspecialty or meet one (1) of the requirements under Rule 1200-6-1-.22 (1) (d) and provide all required documentation in sup-

port of that qualification and have at least four (4) years of full time clinical laboratory work experience as defined in Rule 1200-6-1-.22 (1) (g) subsequent to qualifying as a special analyst. The license shall be limited to the subspecialty for which the applicant is qualified.

- (1) (c) Experience begins when the applicant either receives a national certification or state licensure at the technologist level.
- (1) (d) Unless qualified as a medical laboratory director, in addition to the requirements indicated in subparagraph (1) (b) to be licensed as a medical laboratory supervisor the individual must also provide the following documentation:
 - 1. Proof of at least forty-five (45) contact/clock hours of management continuing education through attendance of professional workshops, seminars and/or courses conducted on subjects relevant to the managerial operation of a clinical/anatomic laboratory. Course content must relate to traditional management/supervisory skills in accordance with the topic guidelines established by the Board. A minimum of eight (8) contact hours must be obtained through formal workshop programs. Fifteen (15) contact hours will be awarded for each semester hour awarded by a college or university; and
 - 2. Proof of at least fifteen (15) contact/clock hours of technical continuing education through attendance of professional workshops, seminars and/or courses. Technical course content should be at an intermediate/advanced level and include a variety of technical materials related to clinical laboratory practice.
 - 3. The management and technical hours submitted for continuing education must be completed subsequent to qualifying as a medical technologist as defined in subparagraph (1) (c).
 - 4. Proof of attendance must be documented and submitted with all continuing education.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-104, 68-29-105, and 68-29-118.

Rule 1200-6-1-.22 Qualifications, Responsibilities, and Duties of Testing Personnel, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Qualifications. All testing personnel must hold a valid Tennessee License issued by the Board to perform or report a laboratory test.
 - (a) A medical laboratory technologist shall meet one of the following requirements, in addition to possessing national certification by examination at the technologist level:
 - 1. A baccalaureate degree in medical technology or in one of the biological, chemical or physical sciences, and with the completion of medical laboratory technologist training program that was, at the time of graduation, either
 - (i) approved or under the auspice of the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS); or
 - (ii) approved by a national accrediting agency acceptable to the Board; or

- (iii) completed in a specialty program conducted by a hospital or other institution approved pursuant to Rule 1200-6-2-.04; or
1. A baccalaureate degree from an accredited college/university, completion of an accredited MLT/CLT training program, three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (g); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (f); or
 2. A baccalaureate degree from an accredited college/university, and completion of an official military laboratory procedures course of at least fifty (50) weeks duration in residence and have held the military enlisted occupation a specialty of Medical laboratory Specialist, and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (g); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (f); or
 3. A baccalaureate degree from an accredited college/university, five (5) years of full time clinical laboratory work experience as defined subparagraph (1) (g); the individual must have completed science coursework equivalent to that required in laboratory science education program as defined by subparagraph (1) (f); or
 5. For those individuals who were eligible [see (i) and (ii)] for national certification by examination at the technologists level prior to September 1, 1997 and for those individuals who obtained national certification by examination at the technologists level prior to September 1, 1997:
 - (i) and additionally having received a passing grade on a Health and Human Services proficiency examination in clinical laboratory science and completion of five (5) years of full time clinical laboratory work experience as defined in subparagraph (1) (g); or
 - (ii) a minimum of ninety (90) semester hours including hours science coursework equivalent to that required in a laboratory science education program as defined by (1)(f) of this rule; and with the completion of a medical laboratory technologist training program that was approved at the time of graduation by National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) or a national accrediting agency acceptable to the Board.
- (b) A medical laboratory technician shall meet one of the following requirements, in addition to holding national certification by examination at the technician level:
1. An associate degree from an accredited college/university and completion of an accredited medical laboratory technician training program that was approved at the time of graduation by National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) or a national accrediting agency acceptable to the Board; or
 2. An associate degree from an accredited college/university and completion of an official military laboratory procedures course of at least fifty (50) weeks duration in residence and have held the military enlisted occupation specialty of Medical Laboratory Specialist; or
 3. An associate degree from an accredited college/university which contains six (6) semester hours of chemistry and six (6) semester hours of biology and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (g).

- (c) A medical laboratory technologist may obtain a license in any of the following categories: chemistry, hematology, immunohematology, or microbiology. The applicant must:
1. Present proof of national certification by a certifying body acceptable to the Board in the laboratory specialty in which licensure is being sought at the technologist level, and
 2. Meet one of the additional qualifications referred to in subparagraph (1) (a).
- (d) An individual may be issued a special analyst license to perform tests in only a limited range (as listed on the license) if the procedure(s) for which licensure is being sought is a new, emerging technology in the clinical laboratory or represents a subspecialty not otherwise regulated. The procedure(s) must not be a component of the traditional clinical laboratory science body of knowledge contained in chemistry, hematology, microbiology or immunohematology; and
1. The individual is certified by a national certification body approved by the Board, where such certification or qualification exists and possess a baccalaureate degree from an accredited college/university relevant to the subspecialty, or
 2. In the absence of national certification the individual possesses at least a baccalaureate degree from an accredited college/university relevant to the subspecialty in which licensure is being sought and proof of three (3) years of relevant work experience as approved by the Board. The Board shall approve all individuals qualifying in this manner. Individuals must obtain national certification at such time it becomes available and request proof of said national administrative certification be sent directly to the Board's administrative office from the agency to continue licensure. Failure to obtain national certification shall result in revocation of the license.
- (e) Testing personnel performing blood gas (pCO₂, PO₂, and Ph) analysis and co-oximetry analysis (measurement of oxygen saturation) and report the measurement to carboxyhemoglobin, total hemoglobin, methemoglobin, and oxyhemoglobin and sulfhemoglobin on automated instruments shall:
1. Hold a valid laboratory license permitting performance of tests in the chemistry specialty, or
 2. Hold a valid license as a special analyst limited to blood gases or
 3. Hold a valid arterial blood gas (ABG) endorsement issued by the Board of Respiratory Care, pursuant to the Respiratory Care Practitioner Act and rules promulgated by that board.
- (f) The science coursework equivalent to that required in a laboratory science education program includes:
1. Sixteen (16) semester hours or twenty-four (24) quarters of chemistry which shall include one (1) full academic year of general chemistry courses including lectures and laboratory and one course in organic chemistry or biochemistry including lectures and laboratory.
 2. Sixteen (16) semester hours or twenty-four (24) quarters of biological sciences. Microbiology is required including lecture and laboratory.
 3. Three (3) semester hours or six (6) quarters of mathematics.

4. The college courses must be acceptable toward a major in those fields of study. Survey, audit, remedial, college level examination program, advanced placement, and clinical courses do not qualify as fulfillment of the chemistry, biology, or mathematics requirements.
- (g) Clinical laboratory work experience includes:
1. That obtained in a medical laboratory licensed under the medical laboratory act and the regulations promulgated thereunder with a director at the doctoral level, or
 2. That obtained in other laboratory facilities in which there is a director at the doctoral level and testing is done at least at a moderately complex level. The Board must approve these facilities for the purpose of clinical lab work experience.
 3. For individuals seeking licensure in one of the following categories: chemistry, hematology, immunohematology, or microbiology acceptable clinical laboratory work experience must be predominately in the category that licensure is being sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-116, 68-29-117, and 68-29-118.

Rule 1200-6-1-.23 Qualifications and Duties of the Medical Laboratory Supervisor-Cytology, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Qualifications. The laboratory must have a general cytology supervisor who meets the qualifications listed below and provides supervision in accordance with these rules. The cytology general supervisor must:
 - (a) Hold a valid Cytotechnologist license in Tennessee or meet one (1) of the requirements under Rule 1200-6-1-.24 and provide all required documentation in support of that qualification; and
 - (b) Have at least four (4) years of full-time work experience as a Cytotechnologist within the ten (10) years preceding the application. Experience must be in an anatomic pathology laboratory with a director at the doctoral level or other anatomic laboratories acceptable to the Board; and
 - (c) Unless qualified as an anatomic pathology laboratory director, in addition to the requirements indicated above to be licensed as a cytology supervisor the individual must also provide the following:
 1. Proof of at least forty-five (45) contact/clock hours of management continuing education through attendance of professional workshops, seminars and/or courses conducting on subjects relevant to the managerial operation of a laboratory. Course content must relate to traditional management/supervisory skills in accordance with the topic guidelines established by the Board. Eight (8) contact hours must be obtained through formal workshop programs. Fifteen (15) contact hours will be awarded for each semester hour awarded by a college or university; and
 2. Proof of at least fifteen (15) contact/clock hours of technical continuing education through attendance of professional workshops, seminars and/or courses. Technical course content should be at an intermediate/advanced level and include a variety of technical materials related to anatomic pathology laboratory practice.

3. Proof of attendance must be documented and submitted with all continuing education.
 4. The management and technical hours submitted for continuing education must be completed subsequent to qualifying as a cytotechnologist which is defined as beginning with the applicant completed all specified degree requirements and would be eligible for national certification or state licensure at the cytotechnologist level.
- (2) Duties. The cytology general supervisor is responsible for the day-to-day supervision or oversight of the laboratory operation and personnel performing testing and reporting test results. Responsibilities and duties of the medical laboratory supervisor-cytology supervisor include:
- (a) Being accessible to provide telephone or electronic consultation to resolve technical problems in accordance with policies and procedures established by the technical supervisor of cytology.
 - (b) Documenting the slide interpretation results of each gynecologic and nongynecologic cytology case he or she examined or reviewed.
 - (c) For each twenty-four (24) hour period, documenting the total number of slides examined or reviewed in the laboratory as well as the total number of slides examined or reviewed in any other laboratory or for any other employer, and
 - (d) Documenting the number of hours spent examining slides in each twenty-four (24) hour period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, and 68-29-118.

Rule 1200-6-1-.24 Qualifications and Duties of the Cytotechnologist, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Qualifications. Each person examining cytology slide preparations must possess a current special analyst license as a cytotechnologist issued by the State of Tennessee and fulfill one (1) of the following requirements in addition to providing proof of national certification by a certifying agency approved by the Board.
 - (a) Submit proof of a baccalaureate degree from a regionally accredited college/university and cytology training from a school accredited by the Committee on Allied Health Education and Accreditation (CAHEA), Commission of Accreditation of Allied Health Education Programs (CAAHEP) or other accrediting body acceptable to the Board.
 - (b) For those who graduated from training before September 1, 1992, submit proof of two (2) years of a full time anatomic pathology laboratory experience within the five (5) years preceding application with a director at the doctoral level and two (2) years in an accredited institution and with at least (12) semester hours or eighteen (18) quarter hours in science, eight (8) semester hours or twelve (12) quarter hours which are in biology; and
 1. Twelve (12) months of training in an accredited school of cytotechnology approved by the Board; or
 2. Six (6) months of formal training in an accredited school of cytotechnology and six (6) months of full-time experience in cytology in a laboratory acceptable to the pathologist who directed the formal six (6) months of training.

- (c) For those who graduated from training before January 1, 1969, submit proof of graduation from high school or equivalent; and
 - 1. Six (6) months of training in cytotechnology in a laboratory directed by a pathologist or other physician providing cytology services; and
 - 2. Two (2) years of full time anatomic pathology laboratory experience with a director at the doctoral level within the five (5) years preceding application.
- (2) Responsibilities and duties of the cytotechnologist include:
 - (a) The slide interpretation results of each gynecologic and nongynecologic cytology cases examined or reviewed are documented.
 - (b) For each twenty-four (24) hour period, documenting the total number of slides examined or reviewed in the laboratory as well as the total number of slides examined or reviewed on any other laboratory or for any other employer.
 - (c) Documenting the number of hours spent examining slides in each twenty-four (24) hour period.
 - (d) Accepting or rejecting the cytologic specimen based upon established criteria.
 - (e) Storing or transporting specimens using appropriate preservation methods.
 - (f) Selecting the most appropriate preparation and staining techniques and preparing specimens for microscopic analysis.
 - (g) Operating, calibrating, conducting performance checks and maintaining any laboratory instrument or equipment.
 - (h) Recognizing and correcting basic instrument malfunctions. Notifying cytology general supervisor when appropriate,
 - (i) Preparing stains and reagents from a prescribed procedure, making any adjustments needed.
 - (j) Evaluating stains and reagents according to established criteria.
 - (k) Conducting established quality control procedures on equipment, stains, reagents: evaluating results of quality control and implementing corrective action when indicated.
 - (l) Determining performance specifications for new preparation techniques.
 - (m) Establishing basic quality control procedures.
 - (n) Performing comparison studies on new or existing procedures and reporting results in an established format.
 - (o) Utilizing the microscope properly for visualization of the specimen, applying basic knowledge of microscope care and maintenance.
 - (p) Determining specimen adequacy after microscopic examination.

- (q) Screening, detecting, selecting, and marking areas most representative of any pathological process present.
- (r) Making an interpretation based upon the microscopic appearance of the cytologic specimen,
- (s) Establishing and monitoring quality assurance/continuous quality improvement programs.
- (t) Establishing and monitoring safety programs in compliance with laboratory regulations.
- (u) Utilizing laboratory information systems or other methods to accurately and effectively report patient results.
- (v) Writing laboratory procedures conforming to a standardized format.
- (w) Performing orientation and supervision for students and new or less skilled laboratory personnel.
- (x) Reporting test results conforming to established procedures.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, and 68-29-118.

Rule 1200-6-1-.25 Personnel Exempt from Licensure, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (3) in its entirety and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraph (2) shall read:

- (2) Personnel performing Waived and Point of Care laboratory testing shall be exempt from licensure, provided such testing is performed in accordance with rules 1200-6-3-.16 and 1200-6-3-.17 governing Medical Laboratories.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-104, and 68-29-105.

Rule 1200-6-3-.07 Participation in Proficiency Testing, is amended by deleting part (1) (a) 3. in its entirety and substituting instead the following language, so that as amended, the new part (1) (a) 3. shall read:

- (1) (a) 3. For those tests performed by the laboratory for which proficiency testing is not required by 42 CFR Part 493, Subpart H of the CLIA regulations, a laboratory must establish and maintain the accuracy and reliability of its testing procedures, in accordance with Rule 1200-6-3-.10 (5).

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

Rule 1200-6-3-.09 Quality Control, is amended by deleting part (27) (d) 4. in its entirety and substituting instead the following language, so that as amended, the new part (27) (d) 4. shall read:

- (27) (d) 4. The laboratory must establish and document an annual statistical evaluation of the number of cytology cases examined, number of specimens processed by specimen type, volume of patient cases reported by diagnosis (including the number reported as unsatisfactory for diagnostic interpretation), number of gynecologic cases where cytology and available histology are discrepant, the number of gynecologic cases where any rescreen of a normal or negative specimen results in reclassification as malignant or premalignant, as defined in part (c) 1. of this paragraph, and the number of gynecologic cases for which histology results were unavailable to compare with malignant or premalignant cytology cases as defined in part (c) 1. of this paragraph.

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

Rule 1200-6-3-.15 Special Regulations for ASTC, Blood Donor Centers, and Plasmapheresis Centers, is amended by deleting subparagraph (2) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (e) shall read:

- (2) (e) The performance of additional testing that includes but is not limited to donor accessing (ABO, Rh, Antibody Detection and/or identification, STS, HIV, hepatitis tests, ALT, protein electrophoresis, etc.) shall require the facility to comply with Rule 1200-6-3-.14.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd day of January, 2003. (01-11)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-6-204 and 63-6-214. 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 31st day of March, 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 RULE**NEW RULE****TABLE OF CONTENTS**

0880-2-.21 Office Based Surgery

0880-2-.21 OFFICE BASED SURGERY. A license to practice medicine issued pursuant to T.C.A. § 63-6-204 authorizes the holder to perform surgery. To the extent that any licensee performs surgery in his or her office rather than a hospital, abortion clinic, or ASTC, that licensee or the governing body of the entity lawfully authorized to practice medicine wherein the surgery is to be performed shall comply with these rules.

(1) Definitions

- (a) ACLS (Advanced Cardiac Life Support) - A certification that means a person has successfully completed an advanced cardiac life support course offered by a recognized accrediting organization.
- (b) ASTC – An ambulatory surgical treatment center licensed by the Department of Health Division of Health Care Facilities.
- (c) Board – The Tennessee Board of Medical Examiners.
- (d) Conscious Sedation - A drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are usually required to maintain a patent airway, and spontaneous ventilation is usually adequate. Cardiovascular function is usually maintained.
- (e) Deep Sedation – a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients often require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.
- (f) General Anesthesia – A drug induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug induced depression of neuromuscular function. Cardiovascular function may be impaired.
- (g) Health Care Facilities Reporting System – The system located within the Department of Health Division of Health Care Facilities organized for receipt an analysis of “unusual incident” reports from licensed health care facilities. The contact address is

Unusual Incident Reporting Unit
Division of Health Care Facilities
First Floor, Cordell Hull building
425 Fifth Avenue North
Nashville, TN 37247-0508

Fax: (615) 253-4356

- (h) Hospital – A hospital licensed by the Department of Health Division of Health Care Facilities.
 - (i) PALS (Pediatric Advanced Life Support) - A certification that means a person has successfully completed a pediatric advanced life support course offered by a recognized accrediting organization.
 - (j) Physician – A person licensed to practice medicine and surgery pursuant to Tennessee Code Annotated, Title 63, Chapter 6.
 - (k) Regional Block – The administration of local anesthetic agents to interrupt nerve impulses in a major region of the body including spinal blocks, epidural blocks, caudal blocks, upper and lower extremity plexus blocks and intravenous regional anesthetic.
 - (l) Surgery – The excision or resection, partial or complete, destruction, incision or other structural alteration of human tissue by any means (including through the use of lasers) performed upon the body of a living human for purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering, or for aesthetic, reconstructive or cosmetic purposes, to include, but not limited to; incision or curettage of tissue or an organ; suture or other repair of tissue or organ, including a closed or an open reduction of a fracture; extraction of tissue, including premature extraction of products of conception from the uterus; and insertion of natural or artificial implants. Surgery does not include the suturing of minor lacerations.
- (2) Administration - Office based surgery shall be administered in a manner to ensure high quality health services.
- (a) At a minimum the following shall be required for any office in which surgery is to be performed:
 - 1. The physician or governing body shall establish policies and procedures describing organizational structure including lines of authority, responsibilities, and accountability of personnel.
 - 2. The physician or governing body shall be responsible for ensuring the surgical facilities and personnel are adequate and appropriate for the types of procedures performed.
 - 3. Policies and procedures shall be written for the orderly conduct of the surgical office and reviewed on an annual basis.
 - 4. The physician or governing body shall establish written policies governing the following:
 - (i) Specific operative and/or invasive procedures which may be performed in the office.
 - (ii) Types of anesthesia services performed.
 - (iii) Responsibilities of the health care personnel providing services.
 - (iv) Infection control practices to be followed.
 - (v) Handling and disposal of infectious and hazardous waste.

- (vi) Procedures to be followed in the event that a patient requires transfer to a hospital, either electively or emergently.
 - 5. Compliance with all applicable local, state, and federal laws, codes and regulations.
 - 6. For all surgical procedures the level of sterilization shall meet current OSHA standards.
 - 7. For all surgical procedures, equipment used must be up to the manufacturer's recommended specifications. If anesthesia equipment is used, it must also meet current standards.
 - 8. When inhalation anesthetics are administered, there should be a reliable and adequate system for scavenging waste anesthetic gases.
- (b) Surgical procedures that may not be performed in a physician's office under any circumstances include the following:
- 1. Surgeries that require major invasion of body cavities, including intracranial, intraabdominal (except for urological procedures, insertion of catheters or drains), and intrathoracic.
 - 2. Procedures that are anticipated to generally result in a blood loss in excess of two hundred and fifty cubic centimeters (250 cc).
 - 3. Major peripheral vascular surgeries.
 - 4. Major orthopedic surgeries.
 - 5. Surgeries on children two (2) years of age or younger.
 - 6. Emergency surgeries except those that are unexpectedly incident to another authorized surgical procedure being performed in the physician's office.
- (c) Withholding Resuscitative Services - The physician or governing body shall maintain and establish policies and procedures which allow for the withholding of CPR and compliance with DNR orders for individual patients.
- (d) Patient Rights - Each patient shall, at a minimum be afforded the following rights:
- 1. To be treated with respect, consideration and dignity.
 - 2. To privacy in treatment.
 - 3. To have their records kept confidential and private.
 - 4. To be provided information concerning their diagnosis, evaluation, treatment options and progress.
 - 5. An opportunity to participate in decisions involving their health care.
 - 6. To refuse any diagnostic procedure or treatment and be advised of the medical consequences of that refusal.

7. To be informed if physician does not have professional liability coverage for the proposed procedure.
 8. To obtain a copy of their personal medical record.
 9. To have appropriate assessment and management of pain.
 10. To be free from mental and physical abuse. Should this right be violated, the physician must notify the Tennessee Department of Human Services, Adult Protective Services or Tennessee Department of Children Services immediately as required by law.
- (e) Establish a performance improvement program that reviews on a regular basis the following:
1. Infection control practices; and
 2. Safety practices; and
 3. Complications; and
 4. Documentation of periodic reviews to determine the appropriateness of clinical decision-making; and
 5. The overall quality of care.
- (3) Quality of Care
- (a) Personnel/Credentialing/Training
1. Regular staff education programs and training sessions shall be provided and documented which include sessions on emergencies, life safety, medical equipment, utility systems, infection control, and hazardous waste practices.
 2. All operating room and recovery personnel who provide clinical care shall be qualified to perform services commensurate with the appropriate levels of education training and experience and if any of the assigned duties in the office incident to the surgery falls within the scope of practice of a profession regulated pursuant to Tennessee Code Annotated Title 63, they shall hold a current Tennessee license for a profession authorized by law to perform those duties.
 3. Unlicensed personnel may not be assigned duties or responsibilities that require professional licensure. Duties assigned to unlicensed personnel shall be in accordance with their training, education, and experience and under the direct supervision of a licensed and qualified health care practitioner.
 4. The physician who performs the surgery shall have privileges to perform that surgery in a local hospital within reasonable proximity to the place in which the surgery is to be performed. This physician must also have a standing transfer agreement with the hospital in the event transfer becomes necessary.
- (b) Pre-operative evaluations - Pre-procedure counseling and preparation shall be provided and documented in the patient's medical record which shall include the following:

1. An evaluation of the condition of the patient and potential risk associated with treatment options.
2. That if the patient has a pre-existing medical or other conditions that they have been referred to an appropriate specialist for a pre-operative consultation and/or to another appropriate facility.
3. That if the surgery requires general anesthesia, deep sedation or major regional anesthesia the patient has an American Society of Anesthesiologist and Physical Classification I or II.
4. That if the surgery requires conscious sedation the patient has an American Society of Anesthesiologist and Physical Status Classification I, II, and/or III.
5. That an adequate support system exists for the patient to provide for necessary follow-up care.
6. A medical history and physical examination performed within thirty (30) days of the procedure that includes information such as: allergies, current medications, pertinent laboratory values, pertinent medical conditions/impairments, presumptive diagnosis, and plan.
7. That there has been full compliance with the informed consent requirements of these rules.

(c) Medical Records

1. Content- The medical record shall be maintained for each person receiving medical care and shall include:
 - (i) Patient identification.
 - (ii) History and physical examination.
 - (iii) Baseline vital signs including blood pressure, pulse and respiration.
 - (iv) Any pertinent progress notes, operative reports, consent forms, anesthesia records, recovery records.
 - (v) Pertinent laboratory reports.
 - (vi) Pertinent x-ray reports.
 - (vii) Any communication with other medical personnel.
 - (viii) Allergies and any untoward drug reactions.
 - (ix) Discharge summary including instructions for self care and instructions for obtaining postoperative emergency care.
2. The physician or governing body shall develop policies and procedures to address retention of active records, retirement of inactive records, timely entry of data in records, and release of information contained in records in accordance with rules of the Board of Medical Examiners.
3. Patient information shall be treated as confidential and protected from loss, tampering, alterations, destruction, and unauthorized or inadvertent disclosure.

4. Records shall be organized in a consistent manner that facilitates continuity of care.
- (d) Informed Consent – Informed consent shall be obtained prior to performance of the surgery, documented in the medical record and shall include the following:
1. Disclosure and discussion of the nature and objective of the anesthesia planned and surgery to be performed.
 2. Disclosure and discussion of the risks and benefits of the surgery and alternatives to the surgery.
 3. Disclosure to the patient of the hospital in which the operating physician has surgical privileges and to which the patient will be transported in case it becomes necessary. If the patient chooses not to receive care at a hospital in which the operating physician has surgical privileges the informed consent shall include the name of the physician at the hospital chosen by the patient who will accept responsibility for the patient should the need for transfer arise.
- (e) Transfer Protocols
1. The physician or governing body shall develop a patient referral system for referrals to other health care providers when extended or emergency services are needed.
 2. The physician or governing body shall have a written transfer agreement with a licensed hospital which includes the name of the physician who would accept responsibility for a patient if the operating physician is unable to provide the necessary care at that hospital.
- (f) Reporting Requirement - Any incident during or following surgery which results in patient death within thirty (30) days, unscheduled transport of patients to a hospital for observation or treatment for a period in excess of twenty-four (24) hours, or unscheduled hospital admission of patients within seventy-two (72) hours of discharge from office surgery shall be required to be reported within fourteen (14) days to the Health Care Facilities Reporting System for purposes of analysis and reporting to the Board at least annually regarding the aggregate data .
- (4) Clinical
- (a) Level I Office Surgery
1. Scope - Level I Office Surgery includes the following:
 - (i) Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal oral preoperative tranquilization of the patient.
 - (ii) Liposuction involving the removal of less than 250 cc supematant fat is permitted.
 - (iii) Incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, skin biopsies, artbrocentesis, thoracentesis, paracentesis, dilation of urethra, cysto-scopic procedures, and closed reduction of simple fractures or small joint dislocations (i.e., finger and toe joints).

- (iv) Pre-operative medications not required or used other than minimal preoperative tranquilization of the patient; anesthesia is local, topical, or none. No drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient is permitted in Level I Office Surgery.
 - (v) Chances of complication requiring hospitalization are remote.
2. Standards for Level I Office Surgery.
- (i) Training Required. Surgeon's continuing medical education should include proper dosages; management of toxicity or hypersensitivity to regional anesthetic drugs. Basic Life Support Certification is recommended but not required.
 - (ii) Equipment and Supplies Required. Oxygen, positive pressure ventilation device; Epinephrine (or other vasopressor), Corticoids, Antihistamine and Atropine if any anesthesia is used.
 - (iii) Assistance of Other Personnel Required. No other assistance is required, unless the specific surgical procedure being performed requires an assistant.
- (b) Level II Office Surgery - Scope
1. Level II Office Surgery is that in which pre-operative medication and sedation are used intravenously, intramuscularly, inhalation, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, colonoscopy, and liposuction involving the removal of up to 1000cc supernatant fat.
 2. Level II Office surgery includes any surgery in which the patient is placed in a state which allows the patient to tolerate unpleasant procedures while maintaining adequate cardio respiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.
 3. Transfer Agreement Required. The physician must have a transfer agreement with a licensed hospital within reasonable proximity if the physician does not have staff privileges to perform the same procedure as that being performed in the outpatient setting at a licensed hospital within reasonable proximity.
 4. Level of Anesthetic. Local or peripheral major nerve block, including Bier Block, plus intravenous or intramuscular sedation, but with preservation of vital reflexes.
 5. Training Required. The surgeon must be able to document satisfactory completion of training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or comparable background, training, or experience. The surgeon and one assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support or have a qualified anesthetic provider practicing within the scope of the provider's license to manage the anesthetic.
 6. Equipment and Supplies Required shall be the same as needed for general anesthesia.section 20i-emergencies.

- (i) Suction devices, endotracheal tubes, laryngoscopes, etc.
- (ii) Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.
- (iii) Double tourniquet for the Bier block procedure.
- (iv) Monitors for blood pressure/EKG/Oxygen saturation.
- (v) Emergency intubation equipment.
- (vi) Adequate operating room lighting.
- (vii) Emergency power source able to produce adequate power to run required equipment for a minimum of two (2) hours.
- (viii) Appropriate sterilization equipment.
- (ix) IV solution and IV equipment.

7. Assistance of Other Personnel Required. The surgeon must be assisted by a qualified anesthesia provider as follows: an Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in Board of Medical Examiners (BME) Rule 0880-3-.04 or a registered nurse may be utilized to assist with the anesthesia, if the surgeon is ACLS Certified. An assisting anesthesia provider cannot function in any other capacity during the procedure. If additional assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, osteopathic physician, registered nurse, licensed practical nurse, or operating room technician. A licensed physician, a licensed physician assistant, a licensed registered nurse with post-anesthesia care unit experience or the equivalent, credentialed in Advanced Cardiac Life Support or, in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia.

(c) Level IIA Office Surgery

- 1. Scope - Level IIA office surgeries are those Level II office surgeries with a maximum planned duration of five (5) minutes or less and in which chances of complications requiring hospitalization are remote.
- 2. Standards for Level IIA Office Surgery.
 - (i) The standards set forth in Level II must be met except for the requirements set forth in part 0880-2-.21 (4) (b) 7. regarding assistance of other personnel.
 - (ii) Assistance of Other Personnel Required. During the procedure, the surgeon must be assisted by a physician assistant who is licensed pursuant to Title 63 or a Title 63 licensed Certified Nurse Practitioner, Physician Assistant, Registered Nurse, or Licensed Practical Nurse. Additional assistance may be required by specific procedure or patient circumstances. Following the procedure, a physician must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia. The monitor must be certified in Advanced Cardiac Life Support, or, in the case of Pediatric patients, Pediatric Advanced Life Support.

(d) Level III Office Surgery

1. Scope
 - (i) Level III Office Surgery are those which involve, or reasonably should require, the use of a general anesthesia or major conduction anesthesia and pre-operative sedation. This includes the use of:
 - (I) Intravenous sedation beyond that defined for Level II office surgery;
 - (II) General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; or
 - (III) Major Conduction anesthesia.
 - (ii) Only patients classified under the American Society of Anesthesiologist's (ASA) risk classification criteria as Class I or II are appropriate candidates for Level III office surgery.
2. Hospital Staff Privileges required. The physician must have staff privileges to perform the same procedure as that being performed in the outpatient setting at a licensed hospital within reasonable proximity.
3. Level of Anesthetic.
 - (i) General Anesthetic: loss of consciousness and loss of vital reflexes with probably requirement of external support of pulmonary or cardiac functions.
 - (ii) Major Conduction: epidural, spinal, caudal.
4. Training Required.
 - (i) Surgeon must have documentation of training to perform the particular surgical procedures and must have knowledge of the principles of general anesthesia.
 - (ii) The surgeon and at least one assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support.
 - (iii) Emergency procedures related to serious anesthesia complications should be formulated, periodically reviewed, practiced, updated, and posted in a conspicuous location.
5. Equipment and Supplies Required.
 - (i) Equipment, medications, including immediate access to at least thirty-six (36) ampules of dantrolene, and monitored post-anesthesia recovery must be available in the office if volatile inhalation agents are used and/or if Succinylcholine is used in a procedure.

- (ii) The office, in terms of general preparation, equipment, and supplies, must be comparable to a free standing ambulatory surgical center, including, but not limited to, recovery capability, and must have provisions for proper record keeping including an anesthetic and post anesthetic record which should include monitoring of items listed in subpart 0880-2-.19 (4) (d) 5. (iii).
 - (iii) Blood pressure monitoring equipment; EKG; end tidal CO₂ monitor; pulse oximeter, precordial or esophageal stethoscope, emergency intubation equipment and a temperature monitoring device.
 - (iv) Table capable of trendelenburg and other positions necessary to facilitate the surgical procedure.
6. Assistance of Other Personnel Required. An Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in BME Rule 0880-3-.04, must administer the general or regional anesthesia and an M.D., D.O., Registered Nurse, Licensed Practical Nurse, Physician Assistant, or Operating Room Technician must assist with the surgery. The anesthesia provider cannot function in any other capacity during the procedure. A licensed physician, a licensed physician assistant, or a licensed registered nurse with post-anesthesia care unit experience or the equivalent, and credentialed in Advanced Cardiac Life Support, or in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient has recovered from anesthesia
- (e) Anesthesia Services In General
- 1. General Anesthesia, regional anesthesia, and deep sedation shall be administered only by:
 - (i) A qualified board eligible or board certified anesthesiologist who is credentialed by a hospital to provide anesthesia.
 - (ii) A certified registered nurse anesthetist (CRNA).
 - 2. Conscious sedation shall be administered only by personnel approved for general anesthesia or by personnel educated and trained to administer sedative medicines.
 - 3. After the completion of general anesthesia, regional anesthesia and deep sedation, patients shall be constantly attended by anesthesia personnel until the patient is responsive and discharged from anesthesia care.
 - 4. A log of inspections of the anesthesia equipment shall be made each day the equipment is used. Notation of inspection in the anesthesia record will suffice for this requirement.
 - 5. A record of all services and maintenance performed on all anesthesia machines, vaporizers, and ventilators shall be kept on file along with documentation of regular preventive maintenance as recommended by the manufacturer.
 - 6. When general anesthesia and/or succinylcholine are administered, the facility shall maintain or have immediate access to thirty-six (36) ampules of dantrolene for injection. If dantrolene is administered, appropriate monitoring must be provided postoperatively.

7. The person administering and/or monitoring anesthesia shall be different from the practitioner performing the surgery and shall have no other responsibilities during the procedure.
 8. During all anesthesia, except minor blocks, the patients oxygenation, ventilation, circulation, and temperature shall be continually evaluated.
- (f) Pre, intra, postoperative Services
1. Personnel administering anesthesia or sedation shall be physically present with the patient during the intra-operative period.
 2. At least two (2) on duty members of the office shall be trained in emergency resuscitation. At least one (1) of these individuals shall be trained in advance resuscitative techniques (ACLS or PALS whichever is appropriate for the surgery or scope of services being provided) and be immediately available during all procedures and until all patients are discharged home.
 3. An operative/procedure note shall be created for each surgery describing the procedure performed, the techniques used, participating personnel and their titles, post-operative diagnosis, type of anesthesia, and complications. Where similar procedures are performed at an office routinely, partially pre-printed forms may be utilized as a guide, provided that original data and conclusions applicable to the specific patient are contemporaneously entered to create a complete report.
 4. A post-procedure note shall be created for each surgery and completed prior to discharge of a patient from the office, which shall include such post-procedure data as the patient's general condition, vital signs, treatments ordered, and all drugs, prescribed, administered or dispensed including dosages and quantities.
 5. All patients who receive anesthesia, except minor regional blocks, shall receive appropriate post-operative management. A patient may be excused from a stay in the recovery area only by a specific order of the anesthesia personnel or the operating physician.
 6. The patient shall be transported to the recovery area accompanied by a member of the anesthesia care team who is knowledgeable about the patient's condition. The patient shall be continually evaluated and treated during transport appropriate to the patient's condition.
 7. An oral report on the patient's condition shall be given to the health care personnel responsible for the patient in the recovery area who were not present in the anesthetizing location.
 8. The patient's recovery area condition shall be evaluated and recorded in the medical record. The blood pressure, pulse rate, respiratory rate, blood oxygen saturation, level of consciousness, and when appropriate temperature shall be assess at least every fifteen (15) minutes until they are stable and returned to pre-operative baseline values and/or normal values consistent with the patient's age and medical condition.
 9. Objective criteria, for example a scoring system, shall be established to determine when a patient is "fit" to be discharged.
 10. The recovery area shall be staffed by at least one (1) registered professional nurse, physician assistant, or physician who is certified and experienced in advance cardiac life support and post-anesthesia care.

11. A physician shall remain in the facility and be immediately available to diagnose and treat patient complications until all patients who have had anesthesia other than minor blocks are discharged from the facility.
12. Before discharge, the patient shall be given written and verbal instructions for follow-up care and advice concerning complications. Emergency phone number shall be provided to the patient.
13. If sedation, regional block, or general anesthesia have been used, a responsible adult must be available to accompany the patient and be instructed with regard to the patient care and follow-up.
14. When anesthesia services are provided to children, the required equipment, medication and resuscitative capabilities shall be appropriately sized for the children.
15. The surgical suites shall be constructed, equipped and maintained to assure the safety of patients and personnel.
16. Sufficient space shall be available to accommodate all necessary equipment and personnel and to allow for expeditious access to the patient, anesthesia machine (when present) and all monitoring equipment.
17. Pharmaceutical Services - The office shall maintain and provide drugs and biologicals in a safe and effective manner in accordance with accepted standards of practice. Such drugs and biologicals must be stored in a separate room or cabinet which shall be kept locked at all times.
18. Ancillary Services - All ancillary or supportive health medical services, including but not limited to, radiological, pharmaceutical, or medical laboratory services shall be provided in accordance with all applicable state and federal laws and regulations.
19. Environmental Services
 - (i) Policies and procedures shall be developed to address:
 - (I) Safety
 - (II) Security
 - (III) Control of hazardous materials and waste
 - (IV) Emergency preparedness
 - (V) Life Safety
 - (VI) Medical equipment; and,
 - (VII) Utility Systems.
 - (ii) The staff shall be oriented and educated about the environment of care and possess knowledge and skills to perform responsibilities pursuant to the environment of care policies and procedure.

(iii) The building and grounds shall be suitable to services provided and patients served.

20. Emergencies

(i) At a minimum, there shall be a reliable source of oxygen, suction, resuscitation equipment, and emergency drugs. The type of equipment and amounts of drugs shall be appropriate to the level of anesthesia performed. For conscious, general anesthesia and deep sedation, at least the following equipment and supplies shall be available:

(I) Full and current crash cart which shall, at a minimum, include, the following resuscitative medications:

I. adrenalin (epinephrine) 1: 10,000 dilution;

II. adrenalin (epinephrine) 1: 1000 dilution;

III. atropine 1 mg/ml;

IV. benadryl (diphenhydramine)

V. calcium chloride 10%

VI. dextrose 50%

VII. dilantin (phenytoin)

VIII. dopamine

IX. heparin

X. inderal (propranolol)

XI. isuprel

XII. lanoxin (digoxin)

XIII. lasix (furosemide)

XIV. xylocaine (lidocaine)

XV. magnesium sulfate 50%

XVI. narcan (naloxone)

XVII. pronestyl (procainamide)

XVIII. sodium bicarbonate 50mEq

XVIX. solu-medrol (methylprednisolone)

XX. verapamil hydrochloride

XXI. Mazicon

XXII. Adenosine

XXIII. Labetalol

XXIV. Nitroglycerin

XXV. Nitroprusside

XXVI. Cardizem IV

XXVII. Amiodarone Hydrochloride

(II) Suction devices, endotracheal tubes, laryngoscopes, etc.,

(III) Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.

(IV) Double tourniquet for the Bier block procedure.

(V) Monitors for blood pressure/EKG/Oxygen saturation.

(VI) Emergency intubation equipment.

(VII) Adequate operating room lighting.

(VIII) Appropriate sterilization equipment.

(IX) Defibrillator.

(X) IV solution and IV equipment.

- (ii) Written emergency protocols shall be established to manage emergencies related to conscious, deep sedation, and general anesthesia including but not limited to laryngospasm, bronchospasm, emesis and aspiration, airway occlusion by foreign body, angina pectoris, myocardial infarction, hypertension, hypotension allergic and toxic reactions, convulsions, hyperventilation, and hypoventilation.
- (iii) Appropriate fire fighting equipment, appropriate signage, emergency power capabilities and lighting shall be available.
- (iv) Emergency generators shall not be required if the office does not utilize general anesthesia that renders the patient incapable of self-preservation but should have an emergency power source able to produce adequate power to run required equipment for a minimum of two (2) hours.
- (v) There shall be written protocols for internal and external disasters such as fire, tornadoes, floods, and earthquakes.

(5) Miscellaneous

- (a) Liposuction - Liposuction procedures performed pursuant to these rules shall be performed only by physicians with appropriate training following prescribed national professional guidelines. These procedures shall be within the scope of practices of the health care practitioner and capabilities of the office. Provided however, no such procedures may be performed if the anticipated supernatant fat removal is to be greater than 1000 cc.
- (b) Laser surgery - Laser surgeries performed pursuant to these rules require written policies and procedures that include but are not limited to laser safety, education, training, and control of the laser equipment when other persons are performing laser treatments. A safe environment shall be maintained for laser surgery.
- (c) For all surgery procedures performed in a physician's office, the maximum planned duration of all surgical procedures combined must not exceed four hours. The surgeon should not keep patients past midnight in a physician's office unless the office where the surgery is actually performed is accredited by the AAAASF or the AAAHC and the scope (reason) and procedures for the overnight stay monitoring and coverage is included in the office policy and procedure manual. An overnight stay in the physician's office shall be strictly limited to the physician's office. If the patient has not recovered sufficiently to be safely discharged within 12 hours, the patient must be transferred to a hospital for continued post-operative care.
- (d) Any violation shall be grounds for disciplinary actions before the board pursuant to T.C.A. § 63-6-214 (b) (1).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-6-204 and 63-6-214.

The notice of rulemaking set out herein was properly filed in the Department of State on the 24th day of January, 2003.
(01-12)

THE TENNESSEE WILDLIFE RESOURCES COMMISSION - 1680

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Region II Conference Room of the Tennessee Wildlife Resources Agency, Region II Building, 5105 Edmondson Pike, Nashville, Tennessee, commencing at 9:00 A.M., local time, on the 20th day of March, 2003.

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

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

SUBSTANCE OF PROPOSED RULE

CHAPTER 1660-1-2 RULES AND REGULATIONS FOR BIRDS

AMENDMENT

Rule 1660-1-2-.02 Migratory Bird Hunting is amended by adding in Subparagraph (c), of Paragraph (1) the new sentence "An adequately framed structure is a structure that can be safely hunted as determined by the area manager." between the words and punctuation "place." and the word "All" so that as amended it shall read as follows:

- (c) All permanent draw blind construction must be completed by the fourth Monday in October. To be considered completed an adequate framed structure with minimum dimensions of 4 feet wide, 4 feet high and 8 feet long not to exceed 30 feet in length and not to exceed 300 total square feet with walls consisting of netting wire, or solid material to which camouflage can be attached must be in place. An adequate framed structure is a structure that can be safely hunted as determined by the area manager. All camouflage must be completed by opening day of waterfowl season. Pits may be constructed on sites as designated. Any blinds not meeting these requirements will be canceled.

Subparagraph (l) of Paragraph (1) is further amended by adding the new sentence " If the primary blind permittee does not meet the deadline for having the blind on site, he/she forfeits his/her opportunity to participate in any blind drawing the following year. The primary waterfowl blind permittee is the person who was drawn for a permanent draw blind or who registers a permanent registered blind." following the word and punctuation "drawing." so that as amended it shall read as follows:

- (l) Blinds not chosen at the blind allocation drawing or canceled by Tennessee Wildlife Resources Agency will become temporary blinds sites for the year of the drawing. If the primary blind permittee does not meet the deadline for having the blind on site, he/she forfeits his/her opportunity to participate in any duck blind drawing the following year. The primary waterfowl blind permittee is the person who was drawn for a permanent draw blind or who registers a permanent registered blind.

Paragraph 1 is further amended by adding a new Subparagraph (m) which shall read as follows:

- (m) The primary waterfowl blind permittee shall be responsible for blind construction and removal deadlines. The primary waterfowl blind permittee shall be responsible for removal of all asso-

ciated blind materials, including all litter and trash, stakes, weights, and lines within fifteen (15) days after the last day of waterfowl hunting.

Paragraph 1 is further amended by adding a new Subparagraph (n) which shall read as follows:

- (n) No trees, shrubs, or vegetation shall be cut, chemically sprayed or otherwise destroyed without prior written approval of the area manager. Application to the area manager for any cutting, altering, or spraying must be made prior to the last Saturday in August. Blind holders may conduct agricultural plantings in areas adjacent to their permitted blind sites if written approval in advance is obtained from the area manager.

Part 10 of Paragraph 2, Subparagraph (d) is amended by adding the sentence “For the purpose of this rule, an adequate permanent blind shall mean a structure that can safely be hunted as determined by the area manager.” between the words and punctuation “site.” and the word “Completion” so that as amended it shall read as follows:

- 10. Each year, a permanent blind must be present or be constructed and /or placed on each permanent registered blind site and on each permanent draw blind site. An adequate permanent blind shall mean a structure that can safely be hunted as determined by the area manager. Completion of blind construction and/or placement on these sites must occur by the fourth Monday in October. Camouflage on permanent blinds must be complete by opening day of the regular waterfowl season. Failure to completed construction and/or placement of the permanent blind by the deadline shall result in the termination of its status as a permanent blind site, permitting its use as a site for a temporary blind for the remainder of that hunting season. Thereafter, it may be designated as a permanent draw blind site, at the discretion of the area manager.

Part 13 of Paragraph 2, Subparagraph (d) is amended by deleting in its entirety and the following substituted in lieu thereof:

- 13. No trees, shrubs, or vegetation shall be cut, chemically sprayed or otherwise destroyed without prior written approval of the area manager. Application to the area manager for any cutting, altering, or spraying must be made prior to the last Saturday in August. Blind holders may conduct agricultural plantings in areas adjacent to their permitted blind sites if written approval in advance is obtained from the area manager.

Authority: T.C.A. §§70-1-206, 70-4-107

CHAPTER 1660-1-8 RULES AND REGULATIONS OF HUNTS

AMENDMENT

Rule 1660-1-8-.03 Paragraph (3) is amended by deleting it in its entirety and inserting the following language so it shall read:

- (3) Before any person, except those under 16 years of age hunting small game and waterfowl, may hunt on a wildlife management area or refuge, he must possess a permit as outlined below.

- (a) A WMA Small Game permit is required on the following wildlife management areas and refuges:

AEDC	Kingston Refuge
Alpine Mountain	Kyker Bottoms Refuge
Bark Camp Barrens	Laurel Hill
Barkley Units I & II	Lick Creek
Bean Switch Refuge	Lick Creek Bottoms
Big Sandy (including Gin Creek)	Maness Swamp Refuge
Black Bayou Refuge	Moss Island
Bridgestone/Firestone Centennial Wilderness	MTSU
Buffalo Springs	Natchez Trace
Camden Units I & II	New Hope
Catoosa	Nolichucky
Cheatham	North Chickamauga
Cheatham Lake	Creek
Chickamauga (Candies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units)	Oak Ridge
Chuck Swan	Obion River
Cold Creek	Old Hickory (Unit I)
Cordell Hull	Old Hickory Lock 5 Refuge
Cordell Hull Refuge	Pea Ridge
Cove Creek	Percy Priest (Units I & II)
Cumberland Springs	Perryville
C. M. Gooch	Prentice Cooper
Cypress Pond	Rankin
Eagle Creek	Royal Blue
Eagle Lake Refuge	Shelby Forest
Ernest Rice Sr.	Sundquist
Foothills	Tellico Lake
Forks of the River	Tigrett
Haley-Jaqueth	Watts Bar (Long Island Unit)
Harmon Creek	West Sandy
Haynes Bottom	White Lake Refuge
Henderson Island Refuge	White Oak
Hickory Flat	Williamsport
Hiwassee Refuge	Wolf River
Hop-In Refuge	Woods Reservoir Refuge
Jackson Swamp	Yanahli
Jarrell Switch Refuge	Yuchi Refuge at Smith
J.M. Tully	Bend

A WMA small game permit is required for individuals participating in dog training. A field trial permit is required on Percy Priest WMA and the Tellico Lake – McGhee-Carson Unit.

- (b) A WMA Small Game and Waterfowl permit is required for hunting waterfowl on the following wildlife management areas and refuges:

AEDC	Lick Creek
Barkley Units I & II	Lick Creek Bottoms
Big Sandy (including Gin Creek)	Moss Island
Camden Units I & II	New Hope
Cheatham Lake	Nolichucky
Chickamauga (Candies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units)	North Chickamauga Creek
Cold Creek	Oak Ridge
Cordell Hull	Obion River
Cordell Hull Refuge	Old Hickory (Unit I)
C.M. Gooch	Shelby Forest
Ernest Rice Sr.	Tigrett
Harmon Creek	Watts Bar (Long Island Unit)
Haynes Bottom	West Sandy
Hiwassee Refuge	White Oak
Jackson Swamp	Yanahli
Jarrell Switch Refuge	Yuchi Refuge at Smith Bend
Moss Island	

(c) A WMA big game permit is required for hunting deer, bear, boar, feral hogs, and turkey on the following wildlife management areas and refuges

AEDC	Eagle Lake Refuge
Alpine Mountain	Ernest Rice Sr.
Bark Camp Barrens	Fall Creek Fall State Park
Barkley Units I & II	Foothills
Bean Switch Refuge	Forks of the River
Big Sandy (including Gin Creek)	Gallatin Steam Plant
Bridgestone/Firestone	Harmon Creek
Centennial Wilderness	Haynes Bottom
Buffalo Springs	Henderson Island Refuge
C. M. Gooch	Hickory Flat
Camden Units I & II	Hiwassee Refuge
Catoosa	Hop-In Refuge
Cheatham	Jackson Swamp
Cheatham Lake	Jarrell Switch Refuge
Cherokee	J.M. Tully
Chickamauga (Candies Creek, Johnson Bottoms, Rogers Creek, Yellow Creek Units)	Kingston Refuge
Chuck Swan	Laurel Hill
Cold Creek	Lick Creek
Cordell Hull	Lick Creek Bottoms
Cordell Hull Refuge	Maness Swamp Refuge
Cove Creek	Moss Island
Cumberland Springs	MTSU
Cypress Pond	Natchez Trace
Eagle Creek	Nathan B. Forrest State Historical Area
	New Hope
	Nolichucky
	North Chickamauga Creek

Oak Ridge	Tellico Lake
Obion River	Tigrett
Old Hickory (Unit I)	Watts Bar (Long Island Unit)
Old Hickory Lock 5	West Sandy
Refuge	White Lake Refuge
Pea Ridge	White Oak
Percy Priest (Units I & II)	Williamsport
Perryville	Wolf River
Prentice Cooper	Woods Reservoir Refuge
President's Island	Yanahli
Rankin	Yuchi Refuge at Smith
Royal Blue	Bend
Shelby Forest	
Sundquist	

- (d) A WMA Small Game or WMA Small Game and Waterfowl permit is required to trap on all areas that require a small game hunting permit.

Rule 1660-1-8-.05 Permit Applications And Drawings is amended by deleting Subparagraph (e) of Paragraph (3) in its entirety and the following paragraph substituted in lieu thereof, so that the new paragraph shall read as follows:

- (e) Applications will be drawn in order to establish priorities for blind sites. All participants wishing to sign on with a successful applicant must do so when he makes his/her choice of blind sites. An individual's application for blind selection is immediately voided when he/she signs on with another applicant. All individuals wishing to sign on must possess the necessary licenses and permits indicated in subparagraph (d). Individuals desiring to sign on must be present.

Authority: T.C.A. §§70-1-206 and 70-4-107

**CHAPTER 1660-1-14
RULES AND REGULATIONS FOR REFUGES, WILDLIFE MANAGEMENT AREAS,
AND PUBLIC HUNTING AREAS**

AMENDMENT

Paragraph (4)(a) of 1660-1-14-.14 Hunting And Miscellaneous Uses Of Public Hunting Areas is amended by adding to the end the following sentence, "Enduros, rallies, and/or motocross competition is prohibited on all agency-owned wildlife management areas", so that, as amended, the rule shall read:

- (a) All motorized vehicles must be muffler equipped to suppress noise and be spark arrestor equipped to prevent fires. Operation of motorized vehicles is confined to roads not designated as closed and driving off road into woods fields, strip mines, foot trails and utility rights-of-way is prohibited. Enduros, rallies, and/or motocross competition is prohibited on all agency-owned wildlife management areas.

Paragraph (4)(g) of 1660-1-14-.14 Hunting And Miscellaneous Uses Of Public Hunting Areas is amended by deleting the word "Willamette" and substituting the word "Weyerhaeuser" in its place, so that, as amended, the rule shall read:

- (g) The use of ATVs (4 wheelers, 3 wheelers, dirt bikes, etc.) or any unlicensed motorized vehicle is prohibited on the Weyerhaeuser Public Hunting Area.

Authority: T.C.A. §70-1-206.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of January, 2003.
(01-26)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

**PROCLAMATION 03-01
 SPORT FISHING PROCLAMATION**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119, thereof, the Tennessee Wildlife Resources Commission proclaims the following regulations effective March 1, 2003.

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

A. ENDANGERED SPECIES

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

B. GAME FISH SPECIES

The season is open year-round on the following species, unless otherwise specified in this proclamation. The possession limit is twice the daily creel limit.

Only the daily creel limit may be possessed while afield. It shall also be unlawful to possess while afield any fish, which has been altered to the extent that its species and/or total body length cannot be determined. The length of a fish shall be determined with the fish laying on a flat ruler, the mouth closed, and the caudal (tail) fin lobes squeezed so as to produce the maximum length.

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Rock bass.....	20	No length limit
Black bass (all species in combination).....	5	No length limit
Except as listed below and in Section V, VI, and VII.		
All species from Reelfoot Lake, Reelfoot Watershed Lake #18, Gooch Unit E.....		
		15"
All species from Indian Boundary Lake.....	2	14"
Largemouth and smallmouth bass from Watauga Reservoir.....		
		12"
Largemouth bass and smallmouth bass from Cheatham, Old Hickory, and Melton Hill Reservoirs.....		
		14"
Largemouth and smallmouth bass from Boone, Barkley, Center Hill, Cherokee, Kentucky, Percy Priest, Tims Ford, and Normandy Reservoirs.....		
		15"

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Largemouth bass from Dale Hollow, Chickamauga, Nickajack, and Watts Bar Reservoirs.....		15"
Largemouth bass from Fort Loudoun, Tellico, and Norris Reservoirs.....		14"
Smallmouth bass from Norris, Ft. Loudoun, Tellico, and Watts Bar Reservoirs.....		18"
Smallmouth bass from Dale Hollow.....	2	16-21" Slot*
*One smallmouth bass under 16" and one smallmouth bass over 21"		
Smallmouth bass from Pickwick Reservoir.....		14"
Smallmouth bass from Chickamauga, Nickajack, and Gunterville Reservoirs.....	1	18"
Smallmouth bass from Douglas Reservoir, Pigeon River (from the confluence with the French Broad River to North Carolina state line), and Little Pigeon River (including East and West Prongs) to GSMNP boundary.....	1	20"
Spotted bass from Center Hill Reservoir.....		12"
Spotted bass from Norris, Cherokee, Fort Loudoun, Boone, Ft. Patrick Henry, South Holston, Melton Hill, Tellico, John Sevier, Davy Crockett, Watauga, Chilhowee, and Calderwood Reservoir.....	15	

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

*See Special Definitions (Section XVI) for Reservoir boundary and specific area descriptions of Cherokee, Dale Hollow, Douglas, Norris, and Boone Reservoirs where size limits on smallmouth bass and largemouth bass apply.

SPECIES	DAILY LIMIT	MINIMUM LENGTH
Sauger except as listed below.....	10	15"
From Kentucky Lake.....	14"	
Walleye except as listed below.....	5	16"
Walleye from South Holston and Watauga Lakes.....		18"
Walleye from Tellico Reservoir		15"*
*only one walleye can be 24" or longer		
Walleye or sauger or in combination From Cherokee, Chilhowee, Douglas, Fort Loudoun, Melton Hill, and Tellico Reservoirs and their tributaries.....	10	15"
Walleye or sauger or in combination From Norris Reservoir and its tributaries (upstream to Grissom Island on the Clinch River).....	5	15"
Walleye, sauger or saugeye or in combination From Normandy Reservoir and its tributaries.....	15	15"

SPECIES	DAILY LIMIT	MINIMUM LENGTH
NOTE: For this proclamation, any walleye-sauger hybrid (saugerye) is considered the same as a sauger.		
Striped bass or Cherokee bass (striped bass x white bass hybrid), or in combination. Except as listed below:...	2	15"
On Norris Reservoir during April through October statewide regulations apply, but during November through March the creel and size limits are.....	1	24"
On Cordell Hull and Melton Hill Reservoirs.....		32-42" slot*
*only 1 striped bass per day can be over 42"		
On Cherokee Reservoir-see SECTION II. WATERS WITH CLOSED SEASONS		
Muskellunge.....	1	30"
Crappie (white and black combined) except as listed below.....	30	10"
From private waters.....		No length limit
From Mississippi River.....		No length limit
(river proper, sloughs and oxbows, the Hatchie, Loosahatchie, Forked Deer, Wolf, and Obion River and their tributaries		
From Norris Reservoir.....	10	10"
From Dale Hollow, Center Hill, Douglas, Watauga, Cherokee, South Holston, Ft. Patrick Henry, John Sevier, Boone Reservoirs.....	15	10"
From Pickwick and Guntersville Reservoirs.....	9"	
From State Park Lakes, Reelfoot Lake, Indian Boundary and Davy Crockett Reservoirs.....		No length limit
White bass.....	30	No length limit
Northern pike.....		No limits
Yellow bass.....		No limits
Bluegill and other bream (except as listed below).....		No limits
From Norris Lake.....	30	No length limit
Pickerel.....		No limits
Yellow perch.....		No limits
Trout (combined daily creel limit-all trout) except as listed below.....	7	6"*
6" size limit is for brook trout only		
Lake trout.....	2	

C. Nongame Fish Species

	DAILY LIMIT	MINIMUM LENGTH	MAXIMUM LENGTH
Non-game species except as listed below and in Section V, VI and VIII.....	No limits		
Catfish (blue, channel, and flathead) *only 1 catfish per day greater than 34"			34"*
Catfish (blue and channel) when taken from Allen Branch Pond, and Indian Boundary Lake.....	5		
Beech River Watershed Lakes.....	5		15"
Paddlefish*..... *may be harvested only from Cherokee Reservoir March 1 through March 15	1		30"

SECTION II. WATERS WITH CLOSED SEASONS

A. Land Between the Lakes Wildlife Management Area:

All waters open year-round, except the following:

- (a) Farm ponds – Open to fishing except those ponds posted as closed.
- (b) Bards Lake – Trotlines and limb lines prohibited. Jugs permitted from October 1 through March 21 with a limit of 10 per person.

B. Catoosa Wildlife Management Area

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

C. Woods Reservoir: See Proclamation 74-17 for areas closed to fishing

D. Buffalo Creek (Grainger County): Closed to all fishing and minnow seining from the mill dam upstream.

E. Doakes Pond (Norris Reservoir) – That portion of Norris Reservoir known as Doakes Pond (a subimpoundment), located adjacent to Highway 63 approximately 9 miles NE of LaFollette, is closed to fishing.

F. South Holston Reservoir: Closed to trout fishing December 1 through the last day of February.

G. Center Hill Lake and Tributaries – Closed to taking or possessing of paddlefish.

H. Clear Creek (tributary to the Clinch River, Anderson County) – closed to all fishing including minnow seining from Highway 441 upstream to the second dam (adjacent to the City of Norris Water Tower), as posted, from December 1 through March 31.

I. All TWRA and USFWS hatchery ponds and raceways are closed to fishing year-round.

J. South Holston Tailwater – Closed to all fishing from November 1 through January 31 in the following areas:

- (1) Hickory Tree Bridge upstream to the confluence with Bottom Creek.
 - (2) Downstream point of Boy's Island (the first island downstream of Weaver Pike Bridge) upstream to the top of the first island above Webb Road Bridge.
- K On Cherokee Reservoir, a closed fishing zone will be in effect from July 15 through September 15. This zone is enclosed by lines from the boat ramp at the south end of the dam across the lake to Point 2, from Point 2 to Point 3, and from Point 3 back across the lake to the TWRA boat ramp at the north end of the dam. All bank fishing will be open and the coves along the southeast shoreline will be open to boat fishing, but no fishing for any species will be allowed in the described zone from July 15 through September 15.

SECTION III. CHEROKEE WILDLIFE MANAGEMENT AREA – SPECIAL REGULATIONS

- A. Tellico Area – Daily Permit Required
 - Tellico River from its confluence with Turkey Creek upstream to the Tennessee-North Carolina state line during the period March 15 through September 15.
 - Citico Creek upstream from its confluence with Little Citico Creek during the period March 15 through September 15.
 - Green Cove Pond (See Section III-F)
- 1. Fishing permitted year-round. Closed on Thursday and Friday during the period March 15 through September 15 (except when national or state holidays fall on Thursday and Friday). From September 16 through March 14 fishing is allowed every day and no permit is required.
- 2. Daily limit – 7 trout; possession limit – 14 trout.
- 3. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset. The possession of fishing equipment and/or tackle is prohibited on stream banks except during legal fishing hours.
- 4. Each fisherman permitted only one rod or pole.
- B. Wild Trout Streams
 - Group I
 - North River and tributaries
 - Bald River and tributaries
 - North Fork of Citico Creek and tributaries
 - South Fork of Citico Creek and tributaries
 - Laurel Fork and tributaries on Cherokee WMA beginning at the cable crossing ½ mile upstream from the USFS Dennis Cove Recreation Area and extending upstream
 - Gee Creek and tributaries in Polk County
 - Wolf Creek and tributaries in Polk County
 - Beaverdam Creek and tributaries from its confluence with Birch Branch downstream to Tank Hollow Road (USFS Rd. 6044)
 - Paint Creek and tributaries in Greene County-from USFS campground upstream to U.S. Forest Service Boundary line south of Highway 70 near Munday Gap.
 - 1. Fishing permitted year-round.

2. Daily limit – 3 trout; possession limit – 6 trout.
3. Size limit – Rainbow and brown trout – 9 inches minimum length
Brook trout – 6 inches minimum length
4. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
5. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset.
6. Each fisherman permitted only one rod or pole.

Group II

- Rocky Fork Creek and tributaries on lands owned by SF Rocky Fork Holdings, Inc.
- Higgins Creek and tributaries
- Squibb Creek and tributaries
- Sarvis Cove and tributaries
- Dry Creek and tributaries (Greene County) upstream from the U.S. Forest Service boundary
- Sycamore Creek and tributaries
- Rough Ridge Creek and tributaries
- Little Jacob Creek (Sullivan County)
- Left Prong Hampton Creek (Carter County)

1. Fishing permitted year-round.
2. Daily limit – 7 trout; no more than 3 may be brook trout
Possession limit – 14 trout; no more than 6 may be brook trout
3. Size limit – Rainbow and brown trout – no minimum length limit
Brook trout – 6 inch minimum length limit
4. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
5. Fishing permitted from ½ hour before official sunrise to ½ hour after official sunset.
6. Each fisherman permitted only one rod or pole.

C. Calderwood Reservoir

1. Appropriate licenses from Tennessee or North Carolina are legal on the entire reservoir while fishing from a boat.
2. Fishing permitted year-round.
3. Size limit – none.
4. Daily limit – 7 trout; possession limit – 14 trout

5. Trotlines and limblines prohibited.

D. Slickrock Creek

— That portion of Slickrock Creek which constitutes the boundary between the states of Tennessee and North Carolina.

1. Appropriate licenses from Tennessee or North Carolina are valid on this portion of Slickrock Creek.
2. Fishing permitted year-round.
3. Daily limit – 4 trout; possession limit – 8 trout.
4. Size limit – Rainbow, brown, and brook trout – 7 inches minimum.
5. Fishing permitted ½ hour before official sunrise and ½ hour after official sunset.
6. Only single-hook artificial lures are permitted. Use or possession of bait or multiple hook lures is prohibited. One single-hook artificial lure separated from a legal lure by a length of line (for example: a dropper fly) is also permitted.
7. Each fisherman permitted only one rod or pole.

E. All other streams in the Cherokee Wildlife Management Area not listed above.

1. Fishing permitted daily.
2. Daily limit – 7 trout; possession limit – 14 trout
3. Each fisherman permitted only one rod or pole.

F. Green Cove Pond

Fishing permitted year-round. Closed on Thursday and Friday (except when national or state holidays fall on Thursday or Friday) year-round.

1. Fishing limited to handicapped individuals (see Section XVI), children under age 13 and adults 65 years of age and older.
2. Tellico-Citico daily permit required year-round.
3. Season is open year-round.
4. Days closed – Thursday and Friday (except open on all state and national holidays and scheduled special organized handicapped or children fishing events).
5. Creel limit – 7 trout per day.
6. Size limit – no restrictions.

7. Hours open – ½ hour before sunrise to ½ hour after sunset.
8. Bait restrictions – no minnows.

SECTION IV. TROUT FISHING – SPECIAL REGULATIONS

A. Quality Trout Fishing Areas:

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

1. Hiwassee River: That portion of the Hiwassee River from the L&N Railroad Bridge upstream to the U.S. Forest Service’s “Big Bend Parking Area.”
2. Watauga River: That portion of the Watauga River from the lower end of island below Blevins Road access area downstream to the CSX Railroad bridge.
 - a. Daily limit – 2 trout; Possession limit – 2 trout.
 - b. Size limit – 14 inch minimum length.
 - c. Use or possession of any bait other than artificial lures is prohibited.
 - d. Trout less than 14 inches in length may not be possessed within quality trout fishing areas.

B. City of Gatlinburg:

1. Waters Open:

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

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

2. Season and Creel Limits:

- a. Fishing permitted year-round, except on Thursday, from ½ hour before official sunrise to ½ hour after official sunset.

- 1) From December 1 through March 31:

- (a) Possession of any trout shall be prohibited
 - (b) All trout caught must be immediately returned to the water
 - (c) Use or possession of bait is prohibited. Use or possession of any artificial lures other than single hook artificial flies, spinners, and spoons is prohibited. The use of one dropper fly having a single hook which is separated from a legal lure by a length of line is permissible.
- 2) From April 1 through November 30:
- (a) Daily creel limit shall be five (5) trout.
 - (b) Total possession limit shall not exceed twice the daily creel limit
 - (c) While fishing or when afield, possession of more than the daily creel limit shall be prohibited, regardless of whether the trout are fresh, stored in an ice chest, in a vehicle, or otherwise preserved.
- b. Creel Limits
- General Streams – the creel limit is five (5) trout per day.
 - Children’s Streams - the creel limit is two (2) per day for children twelve (12) and under.
- c. Methods: Fishing is permitted with one hand-held rod and single hook only.
- d. Daily Fees
- 1) In addition to the State licensing requirement, all Tennessee Residents ages 9 through 64 must possess a special Gatlinburg daily permit. The permit fee is \$2.00; provided that a non-resident may purchase a 1-day all inclusive permit, in lieu of the normal license/permit combination for a total fee of \$10.00. Non-residents under the age of 9 are exempt from the Gatlinburg daily permit.
- C. Dale Hollow Reservoir
- 1. April 1- October 31 – Daily creel limit – 7 trout
No more than 2 may be lake trout – no size limit
 - 2. November 1 – March 31 – Daily creel limit – 2 trout
Minimum size limit – 22 inches
- D. Horse Creek (Greene County)
- That portion from the U.S. Forest Service boundary line upstream to the junction of Squibb Creek.
Creel limit: 7 per day except from May 1 – September 30, when the limit is 2 per day.

E. South Fork of the Holston River

From the South Holston Dam to Highway 37 Bridge at Bluff City
 — 16-22 inch slot (protected length range) – 7 trout, only 1 of which can be over 22 inches.

F. Delayed Harvest Areas: In the areas listed below, the harvest or possession of trout will be prohibited during the catch-and-release season. During the catch-and-release season, only artificial lures are permitted and the use or possession of bait is prohibited.

1. Paint Creek – Paint Creek Campground downstream to mouth at French Broad River.
 Catch-and-release season – October 1 through the last day of February.
2. Tellico River – Mouth of Turkey Creek downstream to the Oosterneck Creek Recreation Area.
 Catch-and-release season will be from October 1 through March 14.

G. Big Creek, Goforth Creek, Sheeds Creek, Spring Creek, and Sylco Creek and their tributaries in Polk County.

- Closed to fishing on Fridays from March 1 to July 1 (except state and national holidays)
- Only a single hook lure or a baited single hook is allowed. Use or possession of multiple hook lures or bait is prohibited.
- Fishing permitted ½ hour before official sunrise to ½ hour after official sunset.
- The possession of fishing equipment or tackle is prohibited on stream banks except during legal fishing hours.

SECTION V. WILDLIFE AGENCY LAKES AND WILDLIFE MANAGEMENT AREAS

A. Lakes in the Wildlife Agency Lakes Management System are: Coy Gaither, Bedford, Browns Creek, Carroll, Davy Crockett, Humboldt, Garrett, Gibson County, Graham, Herb Parsons, Laurel Hill, Maples Creek, Marrowbone, VFW, Whiteville, Williamsport, Glenn Springs, and Reelfoot-Indian Creek Watershed Lakes.

B. Seasons, Creel Limits, Size Limits and Hours of Operation

1. Unless noted in Section II, Wildlife Agency Lakes are open year-round. Lakes will be open ½ hour before official sunrise to ½ hour after official sunset. Only authorized personnel may be on Agency Lake property during closed hours, except that Garrett lake is open 24 hours.

2. Creel and Size Limits:

Statewide limits apply except as listed below:

	DAILY LIMIT	MINIMUM LENGTH
Catfish (blue and channel combined).....	5	
from Bedford, Laurel Hill, Williamsport Lakes.....	5	14"

	DAILY LIMIT	MINIMUM LENGTH
Black bass (all species)		
from Gibson County	1	18"
from Williamsport Lakes.....	1	20"
from Glenn Springs, Marrowbone, Bedford.....	5	14-18" slot*
*only 1 bass per day greater than 18".. from Lake Graham, Herb Parsons, Laurel Hill.....	10	14-18" slot
*only 1 bass per day greater than 18".. from Davy Crockett Lake.....	10	
from Browns Creek Lake.....	5	16-21" slot*
*only 1 bass per day greater than 21"		
Bluegill and redear sunfish (combined):		
from Laurel Hill, Bedford, Gibson County, Glenn Springs, Williamsport Lakes...	20	

- C. Williamsport Lakes:
 Whipporwill Lake is "youth fishing" only. Only youths 16 and under and an accompanying adult may fish.

- D. Laurel Hill Lake: The embayment above the road that lies between the concession building and the campground is a "youth fishing" only fishing area. Youths 16 and under may fish.

- E. Methods for Wildlife Agency Lakes:
 - 1. Except for jug fishing as listed below, only rods and reels, poles, and hand-held lines may be used.
 - 2. Jug fishing will be permitted daily from April 1 through September 30 except Saturday, Sunday, Memorial Day, Independence Day, and Labor Day, and daily from October 1 through March 31. Jugs are limited to ten (10) per boat. Jugs must be marked with the owner's name and address.

- F. Bridgestone/Firestone Centennial Wilderness WMA Ponds are designated as "youth fishing" ponds. Fishing is permitted for youths 16 years of age or younger who are accompanied by a non-fishing adult (18 years of age or older). Youths are limited to using one (1) pole or rod while fishing. The ponds will be open on Tuesdays, Thursdays, and Saturdays only, beginning with Tennessee's Free Fishing Day through Labor Day.

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

- G. Egret and Heron Ponds at Williamsport, and the nursery ponds at Laurel Hill Lake are closed to fishing.

SECTION VI. DEPARTMENT OF ENVIRONMENT AND CONSERVATION MANAGED LAKES

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

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

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

Black bass from:

- Big Ridge Lake, Big Ridge State Park, must be a minimum of 14”
 - Poplar Tree Lake, Meeman-Shelby Forest State Park, 14”-18” PLR (slot limit)
- Travis McNatt Lake, Big Hill Pond State Park, daily creel limit of 10 bass (no size limit)

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

- Lake Woodhaven, Montgomery Bell State Park

Channel or blue catfish or in combination:

- Daily creel limit of 5

Crappie (white and black combined):

- Daily creel limit of 30
- No minimum size limit

Bluegill and redear sunfish in combination:

- Poplar Tree Lake, Meeman-Shelby Forest State Park – Daily creel limit of 20 fish

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

- A. Casper Lake (Shelby County) – the minimum size limit on black bass is 16” and the daily creel limit is 2.
- B. New Lake (Lewisburg) – Black bass: Creel limit – 5; minimum length – 13”. No minimum length limit on crappie. Open ½ hour before official sunrise to ½ hour after official sunset. Only rods and reels and cane poles are permitted.

SECTION VIII. MINNOWS

- A. The catching of minnows for the purpose of sale is prohibited in Cannon, Lincoln, Macon, Moore, Smith, Sumner, and Trousdale counties. The possession limit for minnows taken from streams in the above counties is 150 in Cannon, Macon, Smith, Sumner, and Trousdale; 250 in Lincoln and Moore. It shall be unlawful to sell, take for sale, or offer for sale hornyhead minnows (stonerollers) in Carter, Unicoi, Washington, Johnson, Sullivan, and Morgan Counties.
- B. Minnow traps and seines as defined below may be used to catch minnows subject to all laws and regulations governing the catching of minnows.
1. A minnow trap is hereby defined as a device used for the purpose of catching minnows. The mouth opening or openings shall not exceed one and one-half (1 ½") inches in diameter.
 2. A minnow seine is hereby defined as a net having a mesh size no greater than three-eighths (3/8) of an inch on the square, and no greater than ten (10) feet in length.

SECTION IX. TURTLES

- A. Species, Creel and Size Limits, and Seasons
1. Only the Common Snapping Turtle – *Chelydra serpentina serpentina* – may be legally taken.
 2. All turtles listed as endangered or threatened or listed as “In Need of Management” as proclaimed by the Tennessee Wildlife Resources Commission may not be taken, and include:
 - Bog Turtle – *Clemmys muhlenbergi*
 - Alligator Snapping Turtle – *Macrochelys temminckii*
 - Cumberland Slide – *Trachemys (Pseudemys) scripta troosti*
 3. The season is open year-round.
 4. The daily limit is 5. The possession limit is twice the daily creel limit. Only the daily creel limit may be possessed while afield.
 5. The minimum legal length for the common snapping turtle is 12 inches. For purposes of this proclamation, the length of a turtle is determined by measuring the carapace (upper shell) from front to back.
 6. Turtles may be taken by all legal sport fishing methods except archery and spear guns.

Additionally, sport fishermen may take turtles by the use of up to three hoop nets having a minimum mesh size of three-inches (3") on the square in Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Houston, Humphreys, Lake, Lauderdale, McNairy, Madison, Obion, Perry, Shelby, Stewart, Tipton, and Weakley counties. Each net must be marked with the name and address of the owner. Each net must be set so that a portion of the catch area is above the water.
 7. It shall be unlawful to possess while afield any turtle which has been altered to the extent that its species and/or length cannot be determined.

8. At the Reelfoot Wildlife Management Area, all sizes and species of turtles except box turtles and those in Item 2. above may be taken year-round with a daily limit of 5 by legal sport fishing methods.

SECTION X. GIGGING

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

— Bedford	— Lawrence	— Maury
— Giles	— Lewis	— Wayne
— Hickman	— Marshall	
 2. East Fork Obey River and tributaries closed January 1 through April 30.
 3. Norris Reservoir between River Mile 32 (Point 15) and Highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31), and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
 4. Elk River in Carter County from the Highway 321 Bridge downstream to RM 3.0 (Point 11) on the Elk River Arm of the Watauga Reservoir closed from December 1 through May 31.
- E. Species which may be taken and creel limits:
 1. Non-game species – no limit (except that no paddlefish may be harvested).

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

- A. Season open year-round except as noted below.
- B. All waters open except:
 1. Within 100 yards below dams except at Pickwick the closed area will extend downstream to the first moorage cell located across from the boat launching ramp. At John Sevier Steam Plant the discharge channel is also closed. Dipping and cast netting are excluded from this restriction.
 2. Those areas closed to fishing listed in Section II.
 3. All waters closed by separate proclamation.

4. Norris Reservoir between River mile 32 (Point 15) and the highway 25E Bridge on the Powell River Arm and between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30. Cast netting is excluded from this restriction.
 5. The Elk River in Carter County from the Highway 321 Bridge downstream to RM3.0 (Point 11) on the Elk River Arm of Watauga Reservoir closed from December 1 through May 31. Cast netting is excluded from this restriction.
 6. Snagging prohibited year-round on the South Holston tailwater (from South Holston Dam to the headwaters of Boone Reservoir) and Center Hill Reservoir.
- C. Species which may be taken:
1. Non-game species – no limit. (Except that paddlefish may only be harvested from Cherokee Reservoir from March 1 through March 15, with a daily creel limit of 1 fish equal to or larger than 30 inches).
- D. Methods Defined:
1. Grabbling: The taking of fishes with the hands.
 2. Grab Hooking: The taking of fishes using one more single, double, or treble hooks fastened directly to a pole or rod in such a manner that they are not separated from pole or rod by a length of line.
 3. Snagging: The taking of fishes using one or more single, double, or treble hooks which are manipulated or jerked through the water in such a manner as to impale or hook fishes.
 4. Tubbing: The taking of fishes using a tub or like device which has neither top or bottom.
 5. Archery: The taking of fishes using long, recurve, and compound bows using arrows with barbed points; crossbows are prohibited.
 6. Spear-gun Fishing: The taking of fishes using a spear-gun.
 7. Dipping: Taking of fishes using a dip net.
 8. Cast Netting: The taking of fishes by throwing and retrieving a cast net having a maximum radius of 10 feet and with a mesh size (square measure) of not less than one-fourth (1/4") and not greater than one (1) inch.

SECTION XII. SLAT BASKETS

- A. A slat basket is defined as a device used for taking non-game fish only. Slat baskets may have only one outside funnel opening, and may be made of wood, plastic, or cane slats which are placed lengthwise and so constructed that there must be a minimum of four (4) openings in the catching area, each being at least 1 ½" wide and 6" long.
- B. Slat baskets as defined above and properly tagged shall be legal in all public waters except TWRA Managed Lakes.

- C. Season open year-round.
- D. Only non-game fish may be taken. No limit (except that no paddlefish may be harvested).
- E. Only one basket tag will be issued to an individual.
- F. Possession or use of more than one slat basket is prohibited.

SECTION XIII. TROTLINES, LIMBLINES AND JUGS

- A. Season open year-round except as noted in Section II and Section V.
- B. All waters open except as follows:
 - 1. Sport fishing trotlines, limblines, and jugs prohibited within 1,000 yards below any TVA or Corps of Engineers dam.
 - 2. Allen Branch Pond, Indian Boundary Lake, and Chilhowee (McKamy Pond) in Cherokee Wildlife Management Area closed to jug fishing and trotlines. Indian Boundary Lake is also closed to limblines.
 - 3. Trotlines prohibited in the Beech River Watershed Development Authority lakes, in the New Johnsonville Steamplant Harbor, and within 50 yards of the Danville Railroad Bridge dikes.
 - 4. Bards Lake on Land Between the Lakes closed to trotlines and limblines.
 - 5. Trotlines, limblines, and jugs prohibited on Norris Reservoir between River Mile 32 (Point 15) and the Highway 25E Bridge on the Powell River Arm between River Mile 137 (Point 31) and the Highway 25E Bridge on the Clinch River Arm from January 1 through April 30.
- C. Methods Defined:
 - 1. Trotline: A main line with drop lines to which single hooks are attached and baited in order to catch fish. Such drops must not be closer than 24 inches.
 - 2. Limblining: The use of no more than one hook on a single line suspended from a tree or shrub limb, or from a pole imbedded in or braced on the bank, with a maximum of 25 limblines per licensed angler.
 - 3. Jug Fishing: The use of a hook connected by a length of line to a floating buoy (jug).
- D. All species may be taken.
- E. Creel limit on game fish same as statewide; non-game species – no limit (except that no paddlefish may be harvested).
- F. Other Restrictions:
 - 1. Sport fishing trotlines, limblines, and jugs must be tagged and/or marked with the owner's name and address. On trotlines, the tag must be placed on the line within 5 feet of the bank, if the trotline is attached to a bank. On floating trotlines the information shall be marked on the floats.

In all situations, the tag must be placed within 5 feet of either end. On limblines, the tag must be affixed to the line above the water level.

2. Sport fishing trotlines, limblines, and jugs must be run at least once each day.
3. Sport fishermen limited to 50 jugs or blocks each except New Johnsonville Steam Plant Harbor and Bards Lake, where the limit is ten (10) jugs or blocks per sport fisherman and on Beech River Watershed Development Authority Lakes where the limit is twenty (20) jugs or blocks per boat. On Bards Lake, jugs are permitted only from October 1 through March 21.
4. Sport fishing trotlines, limblines, and jugs not fished according to these regulations are subject to be removed by Agency personnel.

SECTION XIV. SHAD TRAWLING

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

SECTION XV. SPECIAL RESTRICTIONS

- A. Reelfoot Lake. During April and May, the use of gasoline engines to propel boats in selected areas of Reelfoot Lake as posted by TWRA signs is prohibited.
- B. Center Hill Reservoir
 1. On the upper end of Center Hill Reservoir including Caney Fork River beginning at Rock Island State Park boat launching ramp and extending upstream to Great Falls Dam, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30. No more than 3 rods and reels or poles may be used.
- C. Dale Hollow Reservoir
 1. Compton Boat Ramp upstream to Hwy 52 bridge on the East Fork Obey River Arm, anglers are restricted to the use of one hook having a single point or one lure having no more than one hook with a single point (artificial or bait) during the period from January 1 through April 30.
 2. No more than 3 rods and reels or poles per boat angler and 6 rods and reels or poles per bank angler may be used.
- D. Umbrella Rig Restriction – Umbrella rigs are defined as an array of more than 3 artificial lures or baits (with or without hooks) used by a single rod and reel combination. If the hook size is 6 or larger, then only one lure or bait may have a hook and that hook must be a single hook.

SECTION XVI. SPECIAL DEFINITIONS**A. Game Fish:**

The following fish are designated as game fish:

Family – Centrarchidae

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

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

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

Rock bass	<i>Ambloplites rupestris</i> (Rafinesque)
Warmouth	<i>Lepomis gulosus</i> (Cuvier)
Bluegill	<i>Lepomis macrochirus</i> (Rafinesque)
Redear sunfish	<i>Lepomis microlophus</i> (Gunther)
Longear sunfish	<i>Lepomis megalotis</i> (Rafinesque)
Green sunfish	<i>Lepomis cyanellus</i> (Rafinesque)
Flier	<i>Centrarchus macropterus</i> (Lacepede)
Redbreast sunfish	<i>Lepomis auritus</i> (Linnaeus)
Pumpkinseed	<i>Lepomis gibbosus</i> (Linnaeus)
Orangespotted sunfish	<i>Lepomis humilis</i> (Girard)

Family – Percichthyidae

Striped bass	<i>Morone saxatilis</i> (Walbaum)
Cherokee bass (Striped bass- White bass hybrid)	<i>Morone chrysops</i> (Rafinesque)
Yellow bass	<i>Morone mississippiensis</i> (Jordan and Eigenmann)

Family – Percidae

Walleye	<i>Stizostedion vitreum</i> (Mitchill)
Sauger	<i>Stizostedion canadense</i> (Smith)
Walleye-Sauger hybrid (Saugeye)	<i>Stizostedion</i> sp.
Yellow perch	<i>Perca flavescens</i> (Mitchill)

Family – Esocidae

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

Muskellunge	<i>Esox masquinongy</i> (Mitchill)
Northern Pike	<i>Esox lucius</i> (Linnaeus)
Chain pickerel	<i>Esox niger</i> (Lesueur)
Grass pickerel	<i>Esox americanus</i> (Lesueur)

Family – Salmonidae

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

Rainbow trout	Oncorhynchus mykiss
Brown trout	Salmo trutta (Linnaeus)
Brook trout	Salvelinus fontinalis (Mitchill)
Lake trout	Salvelinus namaycush (Walbaum)
Ohrid trout	Salmo letnica

B. Non-Game Species:

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

C. Hooks Defined:

Hooks are defined as follows:

- Single hook – 1 point
- Double hook – 2 points
- Treble hook – 3 points

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

E. Reservoir full pool level is the reservoir/stream boundary for harvest restrictions, unless otherwise noted.

F. Norris Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the Highway 25E bridge on the Clinch River Arm and upstream to Gap Creek on the Powell River Arm.

G. Boone Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, extends upstream to the 11E Bridge at Bluff City on the South Fork Holston River Arm and upstream to the new Austin Springs Bridge on the Watauga River.

H. Cherokee Reservoir:

For purpose of size restrictions on largemouth and smallmouth bass, shall extend upstream to the John Sevier Dam.

I. Douglas Reservoir:

For purpose of size and creel restrictions on smallmouth bass and crappie, extends upstream to the ENKA dam on the Nolichucky River and to the mouth of the Pigeon River on the French Broad River.

J. Dale Hollow Reservoir:

For purpose of size and creel restrictions on smallmouth bass, extends upstream on the Wolf River arm to the South Ford Road Bridge near Sulphur Springs.

K. Handicapped – any person who is mentally impaired or physically impaired (including blindness) because of injury or disease, congenital or acquired, which permanently renders him/her so severely disabled as to be unable to move without aid of crutches or a wheelchair, or a person who has 80% permanent impairment of a hand or arm as determined by a physician using the standards outlined in the “Guide to Evaluations of Permanent Rating”, published by the AMA or other acceptable rating system.

L. Bait – any living or dead organism, or prepared substance designed to attract fish by taste or odor. For the purpose of this proclamation, bait includes, but is not limited to, fish, fish eggs, crayfish, worms, grubs, crickets, corn, cheese, bread, pork rinds, putty or paste-type products, and flavors or scents applied to or impregnated into artificial lures.

SECTION XVII. SHOOTING FISH AND TURTLES

Shooting fish and turtles with firearms is prohibited.

SECTION XVIII. SALE OF FISH AND TURTLES

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

SECTION XIX. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation 01-17, dated October 25, 2001.

Proclamation 02-18 received and recorded this 31st day of January, 2003. (01-29)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**PROCLAMATION 03-02****AMENDING 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 proclaimed Proclamation 02-13 at its regular meeting on September 26, 2002, relative to the commercial taking of fish and turtles.

Further, 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 amendments to Section I. WATERS OPEN TO COMMERCIAL FISHING and Section III. GENERAL PROVISIONS of Proclamation 02-13, STATEWIDE PROCLAMATION ON THE COMMERCIAL TAKING OF FISH AND TURTLES, dated September 26, 2002.

SECTION I. WATERS OPEN TO COMMERCIAL FISHING

Amend item 10. under "RIVERS" entitled "Mississippi River" by deleting the last sentence entirely.

SECTION III. GENERAL PROVISIONS

Amend the third sentence in the last paragraph of item B. by deleting the letters "xx" and substituting instead the number "25" which is the block length of paddlefish.

Amend item F. by adding a second sentence with the following language: "The commercial harvest of catfish greater than 34 inches in length is prohibited statewide."

Proclamation 03-02 received and recorded this 31st day of January, 2003. (01-30)

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CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning January 1, 2003 and ending January 31, 2003.

RILEY C. DARNELL
Secretary of State

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