

TAAAR



June 13, 2003
Volume 29, Number 6

RILEY C. DARNELL
Secretary of State

Division of Publications
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Department of State, Authorization No. 305197, 360 copies, June 2003. This public document was promulgated at a cost of \$ 2.90 per copy.

PREFACE

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

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

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

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

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

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

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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 July 2003 is 8.39 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 4.39 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 May 2003. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-01	May 1, 2003	1240 Human Services Medical Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-3-3 Technical and Financial Eligibility Requirements for Medicaid</i> 1240-3-3-.02 Technical Eligibility Factors 1240-3-3-.03 Resource Limitations for Categorically Needy 1240-3-3-.04 Income Limitations for Categorically Needy	Phyllis Simpson Health OGC TN Twr 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	July 15, 2003
05-02	May 2, 2003	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendments	<i>Chapter 1660-1-14 Rules And Regulations For Refuges, Wildlife Management Areas, And Public Hunting Areas</i> 1660-1-14-.14 Hunting And Miscellaneous Uses of Public Hunting Areas	Sheryl Holtam TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	July 16, 2003
05-03	May 8, 2003	1200 Health Health Related Boards	Proposed Rules		<i>Chapter 1200-10-2 General Rules and Regulations Governing the Practice of Reflexology</i> 1200-10-2-.03 Necessity of Registration 1200-10-2-.06 Fees	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	September 26, 2003
05-04	May 8, 2003	0880 Medical Examiners Committee for Clinical Perfusionists	Rulemaking Hearing Rules	Amendment	<i>Chapter 0880-11 General Rules and Regulations Governing the Practice of Clinical Perfusionists</i> 0880-11-.05 Licensure Process	Robert J. Kraemer, Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	July 22, 2003
05-07	May 12, 2003	0480 Dispensing Opticians	Rulemaking Hearing Rules	Amendment	<i>Chapter 0480-1 General Rules Governing Dispensing Opticians</i> 0480-1-.12 Continuing Education	Laurie Doty Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247- 0120 615-741-1611	July 26, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-09	May 13, 2003	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-3-27 Nitrogen Oxides</i> 1200-3-27-.06 Nox Budget Trading Program For State Implementation Plans (40 Cfr 96)	John Patton Air Pollution Control 9th Fl L&C Annex 401 Church St Nashville TN 37243- 1531	July 27, 2003
05-10	May 14, 2003	1320 Revenue	Rulemaking Hearing Rules	Repeals Amendments Repeals	<i>Chapter 1320-6-1 Franchise, Excise Tax Rules</i> 1320-6-1-.01 1320-6-1-.12 1320-6-1-.17 1320-6-1-.26 <i>Chapter 1320-3-2 Income Tax Rules</i> 1320-3-2-.10 Capital Gain Dividends 1320-3-2-.13 Charitable Remainder Trusts 1320-3-2-.11 1320-3-2-.12	Arnold B. Clapp Revenue Legal Office TN Twr, 27th Fl 312 8th Ave. N Nashville TN 37243 615-741-2348	July 28, 2003
05-13	May 14, 2003	0800 Labor and Workforce Development Division of Occupational Safety and Health	Proposed Rules	Amendments	<i>Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry</i> 0800-1-1-.06 Adoption and Citation of Federal Standards <i>Chapter 0800-1-6 Occupational Safety and Health Standards for Construction</i> 0800-1-6-.02 Adoption and Citation of Federal Standards <i>Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture</i> 0800-1-7-.01 Adoption and Citation of Federal Standards 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928	Michael M. Maenza Labor and Workforce Development OSHA 3rd Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville, TN 37243- 0659 615-741-7036	September 26, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-14	May 15, 2003	1180 Psychology	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1180-1 General Rules Governing the Practice of Psychologists, Senior Psychological Examiners, Psychological Examiners, and Certified Psychological Assistants</i> 1180-1-.05 Renewal of License or Certification</p> <p><i>Chapter 1180-2 Rules Governing Psychologists</i> 1180-2-.03 Procedures for Licensure</p>	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	July 29, 2003
05-15	May 15, 2003	1320 Revenue Petroleum Tax Division	Proposed Rules	Repeals	<p><i>Chapter 1320-7-8 Highway User Fuel Tax</i> 1320-7-8-.01 Vehicles Included 1320-7-8-.02 Exemptions 1320-7-8-.03 Application for Permit 1320-7-8-.04 Reports 1320-7-8-.05 Records 1320-7-8-.06 Credit</p>	Thomas R. Bain Revenue TN Tower, 27th Fl 312 8th Ave. N Nashville, TN. 37243 615-741-2348	September 26, 2003
05-17	May 19, 2003	0940 Mental Health and Developmental Disabilities Division of Licensure	Rulemaking Hearing Rules	Repeals	<p><i>Chapter Chapter 0940-5-7 Minimum Program Requirements for Alcohol and Drug Abuse Non-Residential Treatment Facilities</i></p> <p><i>Chapter 0940-5-8 Minimum Program Requirements for Alcohol and Drug Abuse Non-Residential Methadone Treatment Facilities</i></p> <p><i>Chapter 0940-5-9 Minimum Program Requirements for Alcohol and Drug Abuse Residential Detoxification Treatment Facilities</i></p> <p><i>Chapter 0940-5-10 Minimum Program Requirements for Alcohol and Drug Abuse Residential Rehabilitation Treatment Facilities</i></p> <p><i>Chapter 0940-5-11 Minimum Program Requirements for Alcohol and Drug Abuse Halfway House Treatment</i></p>	<p>Arthur Hyde Licensure 425 5th Ave N 5th Fl Cordell Hull Bldg Nashville TN 37243 615-532-6590</p> <p>Cynthia Tyler OGC 425 5th Ave N 5th Fl Cordell Hull Bldg Nashville TN 37243 615-532-6590</p>	August 2, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-17, cont.					<i>Facilities</i> <i>Chapter 0940-5-12</i> <i>Minimum Program Requirements for Alcohol and Drug Abuse Early Intervention Facilities</i> <i>Chapter 0940-5-13</i> <i>Minimum Program Requirements for Alcohol and Drug Abuse DUI School Facilities</i>		
05-19	May 20, 2003	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-2</i> <i>Rules and Regulations For Birds</i> 1660-1-2-.02 Migratory Bird Hunting	Sheryl Holtam, Staff Attorney TWRA P.O. B. 40747 Nashville, TN 37204 (615) 781-6606	August 3, 2003
05-21	May 20, 2003	0870 Massage Licensure Board	Rulemaking Hearing Rules	Amendment	<i>Chapter 0870-1</i> <i>General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.12 Continuing Education	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	August 3, 2003
05-23	May 23, 2003	1200 Health Tennessee Medical Laboratory Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-6-1</i> <i>General Rules Governing Medical Laboratory Personnel</i> 1200-6-1-.20 Qualifications and Duties of the Medical Laboratory Director <i>Chapter 1200-6-3</i> <i>General Rules Governing Medical Laboratories</i> 1200-6-3-.01 Definitions 1200-6-3-.16 Alternate Site Testing,	Robert J. Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	August 3, 2003
05-24	May 28, 2003	0880 Medical Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0880-2</i> <i>General Rules and Regulations Governing the Practice of Medicine</i> 0880-2-.07 Application Review, Approval, Denial, Interviews and	Robert J. Kraemer, Jr OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-	August 11, 2003

ANNOUNCEMENTS

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-24, cont.					<p>Conditioned, Restricted and Locum Tenens Licensure</p> <p><i>Chapter 0880-5 General Rules and Regulations Governing the Utilization of X-Ray Operators in Physician's Offices</i></p> <p>0880-5-.05 Educational Course, Approval and Curriculum for Limited Certification</p> <p>0880-5-.06 Examinations for Certification</p> <p>0880-5-.07 Obtaining and Upgrading Full and Limited Certification</p> <p>0880-5-.10 Scope of Practice</p> <p>0880-5-.11 Bone Densitometry</p>	0120 (615) 741-1611	
05-25	May 28, 2003	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1050-2 General Rules and Regulations Governing the Practice of Osteopathy</i></p> <p>1050-2-.13 Specifically Regulated Areas and Aspects of Medical Practice</p> <p><i>Chapter 1050-3 General Rules and Regulations Governing Utilization of X-Ray Operators in Osteopathic Physicians' Offices</i></p> <p>1050-3-.07 Educational Course Approval and Curriculum for Limited Certification</p> <p>1050-3-.08 Examination for Certification</p>	Robert J. Kraemer, Jr OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	August 11, 2003
05-26	May 28, 2003	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendment	<p><i>Chapter 1200-3-26 Administrative Fees Schedule</i></p> <p>1200-3-26-.02 Construction and Annual Emission Fees</p>	Ron Culberson Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville, TN 37243-1531 (615) 532-0561	August 11, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-28	May 29, 2003	1180-Examiners in Psychology	Rulemaking Hearing Rules	Amendment	<i>Chapter 1180-1 General Rules Governing the Practice of Psychologists, Senior Psychological Examiners, Psychological Examiners, and Certified Psychological Assistants</i> 1180-1-.09 Professional Ethics	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	August 12, 2003
05-32	May 30, 2003	0870 Massage Licensure Board	Rulemaking Hearing Rules	New Rule	<i>Chapter 0870-1 General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.19 Professional Ethical Standards.	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	August 13, 2003

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

Applications will be heard at the June 25, 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 April 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

Nashville Diagnostic Imaging
3319 West End Avenue
Nashville (Davidson Co.), TN 37203
John Crawford – (615)—665-8889
CN0303-018

The establishment of an outpatient diagnostic center, the acquisition of a magnetic resonance imaging (MRI) unit and the initiation of MRI services. If approved, the facility will be located in approximately 2,500 square feet of space. The renovated and newly constructed space will be located on the first floor of the Crystal Terrace Office Building at 3319 West End Avenue, Nashville, Tennessee.

\$ 2,508,000.00

Methodist Medical Center
990 Oak Ridge Turnpike
Oak Ridge (Anderson Co.), TN 37830
Laurie Halsey – (865)—380-2345
CN0303-019

The renovation and expansion of the existing physical plant located at Methodist Medical Center, 990 Oak Ridge Turnpike, Oak Ridge (Anderson County), Tennessee.

\$ 43,731,689.00

**SECRETARY OF STATE - 1360
STATE ELECTION DIVISION**

PUBLIC NOTICE OF PRELIMINARY STATE PLAN

This publication is in accordance with the Help America Vote Act of 2002 (HAVA). According to Section 256 of HAVA, a preliminary version of the State Plan must be available for public inspection and comment thirty (30) days prior to the submission of the plan to the federal commission.

The preliminary version of the plan will be available for inspection and public comment from June 16, 2003 to July 15, 2003. The plan will be posted online at the official State website <http://www.state.tn.us/sos/election.htm>. The plan will also be available through the Secretary of State, Division of Elections at (615) 741-7956 and at all local county election offices. Copies of the plan may be mailed, emailed or faxed. Public comments may be sent to:

Department of State
Division of Elections
Attention: Cara Harr
312 Eighth Avenue North
9th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
(615) 741-7956
(615) 741-1278 (facsimile)
Cara.Harr@state.tn.us (email)

SUMMARY:

On October 29, 2002, President Bush signed into law the Help America Vote Act of 2002 which requires mandatory changes and improvements in the electoral process. In order to make these improvements the federal government will provide funds to the individual States. These funds will be used to improve voting systems, to implement provisional voting and to establish a statewide voter registration database. In order to qualify for funds under Title III, each State must design a long range plan for implementing the Act.

An advisory committee was established for the purpose of assisting in the drafting of Tennessee's State Plan. The empanelled committee included the chief election officials of the two most populous jurisdictions within the State, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens. All public comments will be reviewed and taken into consideration in preparing the final draft. The final draft will be submitted to the Election Assistance Commission for publication in the Federal Register.

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EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 1200 - Department of Health - Office of the Commissioner - Emergency rules covering procedures for administering reimbursement of providers of health care services who contract with state agencies, chapter 1200-24-4 Reimbursement of Health Care Provider Costs, 2 T.A.R. (February 2003) - Filed January 2, 2003; effective through June 16, 2003. (01-01)

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PROPOSED RULES

DEPARTMENT OF HEALTH - 1200

CHAPTER 1200-10-2

GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF REFLEXOLOGY

Presented herein are proposed amendments of the Department of Health, Division of Health Related Boards submitted pursuant to Tennessee Code Annotated, Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Division of Health Related Boards, 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 office of the Division of Health Related Boards on the First Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee 37247-1010 and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact:

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

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1200-10-2-.03, Necessity of Registration, is amended by deleting paragraphs (1), (2), and (4) in their entirety and substituting the following language, so that as amended, the new paragraphs (1), (2), and (4) shall read:

- (1) Except as provided in paragraphs (2) and (4), no person shall engage in the practice of reflexology unless such person has registered with the Division of Health Related Boards.
- (2) This rule shall not apply to:
 - (a) The activities or services of physicians, chiropractors, physical therapists, occupational therapists, athletic trainers, cosmetologists, registered nurses, or members of other professions licensed, certified, or registered by the state who may, on occasion, apply pressure to specific reflex points in the hands and feet in the course of their work; and
 - (b) The activities or services of massage therapists, licensed pursuant to Tennessee Code Annotated, Title 63, Chapter 18, who use reflexology techniques or methods or who advertise reflexology as a service offered to massage therapy clients.

- (4) Except as provided in paragraph (2), any person who advertises or engages in reflexology for compensation without registering with the division pursuant to this act commits a Class C misdemeanor, punishable by a fine only. It is unlawful to use the word "reflexology" or any other term that implies reflexology technique or method when advertising a service by a person who is not registered under this act.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-30-103, 63-30-105, 63-30-108, and 63-30-112.

Rule 1200-10-2-.06, Fees, is amended by deleting paragraphs (2) and (4) in their entirety and renumbering the remaining paragraphs accordingly.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-30-103, 63-30-105, 63-30-108, 63-30-110, and 63-30-112.

The proposed rules set out herein were properly filed in the Department of State on the 8th day of May, 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 September 26, 2003. (05-03)

**THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**CHAPTER 0800-1-1
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR GENERAL INDUSTRY**

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Occupational Safety and Health submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 26th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0293, and in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the amendments or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact: Michael M. Maenza, Manager of Standards and Procedures, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 3rd Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

The text of the proposed amendments is as follows:

AMENDMENT

Paragraph (2) of Rule 0800-1-1-.06 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 1, 2003 to July 1, 2003”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2003 except as provided in Rule 0800-1-1-.07 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

**CHAPTER 0800-1-6
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CONSTRUCTION****AMENDMENT**

Paragraph (2) of Rule 0800-1-6-.02 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 1, 2003” to “July 1, 2003”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2003 except as provided in Rule 0800-1-6-.03 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

**CHAPTER 0800-1-7
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE****AMENDMENTS**

Paragraph (2) of Rule 0800-1-7-.01 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 1, 2003” to “July 1, 2003”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2003 except as provided in Rule 0800-1-7-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date in the second line from “January 1, 2003” to “July 1, 2003”, so that as amended the rule shall read:

0800-1-7-.02 EXCEPTIONS TO ADOPTION OF FEDERAL STANDARDS IN 29 CFR PART 1928. As of July 1, 2003, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

The proposed rules set out herein were properly filed in the Department of State on the 14th day of May, 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 26th day of September, 2003. (05-13)

**THE DEPARTMENT OF REVENUE - 1320
PETROLEUM TAX DIVISION**

**CHAPTER 1320-7-8
HIGHWAY USER FUEL TAX**

Presented herein are proposed repeals of the former Petroleum Tax Division, Department of Revenue (now a part of the Department's Audit Division) submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Revenue 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 repeals are published. Such petition to be effective must be filed with the Department of Revenue, 27th Floor, William R. Snodgrass Tower, 312 8th Avenue North, Nashville, Tennessee, 37243, and in the Department of State, (8th Floor, William R. Snodgrass Tower, 312 8th Avenue North, Nashville, Tennessee 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 copies of the proposed repeals, contact: Nancy Lanham, Department of Revenue Legal Office, William R. Snodgrass Tower, 27th floor, 312 8th Avenue North, Nashville, Tennessee 37243, telephone number 615-741-2348.

The text of the proposed repeals are as follows:

REPEALS

Rule 1320-7-8-.01 (Vehicles Included) is repealed.

Authority: §67-1-102(a) and Acts 1997, ch. 316, §1.

Rule 1320-7-8-.02 (Exemptions) is repealed.

Authority: §67-1-102(a) and Acts 1997, ch. 316, §1.

Rule 1320-7-8-.03 (Application for Permit) is repealed.

Authority: §67-1-102(a) and Acts 1997, ch. 316, §1.

Rule 1320-7-8-.04 (Reports) is repealed.

Authority: § 67-1-102(a) and Acts 1997, ch. 316, §1.

Rule 1320-7-8-.05 (Records) is repealed.

Authority: §67-1-102(a) and Acts 1997, ch. 316, §1.

Rule 1320-7-8-.06 (Credit) is repealed.

Authority: §67-1-102(a) and Acts 1997, ch. 316, §1.

The proposed rules set out herein were properly filed in the Department of State on the 15th day of May, 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 26th day of september, 2003. (05-15)

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PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rule clarifying 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, chapter 1200-13-12 Bureau of TennCare, 2 T.A.R. (February 2003) - Filed January 2, 2003; effective through June 13, 2003. (01-02)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rule clarifying 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, chapter 1200-13-13 TennCare Medicaid, 2 T.A.R. (February 2003) - Filed January 2, 2003; effective through June 13, 2003. (01-03)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rule clarifying 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, chapter 1200-13-14 TennCare Standards, 2 T.A.R. (February 2003) - Filed January 2, 2003; effective through June 13, 2003. (01-04)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rule protecting the due process rights of persons potentially eligible for medical assistance through the TennCare Standard program., chapter 1200-13-15 Administrative Hearing Unit, 2 T.A.R. (February 2003) - Filed January 29, 2003; effective through July 13, 2003. (01-23)
- 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)

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RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES - 0250 CHILD PROTECTIVE SERVICES

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Conference Room 7A of the Cordell Hull Building located at 436 6th Avenue North, Nashville, TN 37243 at 10:00 a.m.. on the 21st day of July, 2003.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7th floor of the Cordell Hull Building, 8th Floor, 436 6th Avenue North, Nashville, TN 37243; (615) 532-5615.

For a copy of this notice of rulemaking hearing, contact: Sherry Abernathy, Director of Child Protective Services, 436 6th Avenue North, 8th Floor, Nashville, TN 37243-1290; (615) 741-8278.

0250-7-9-.01 through 0250-7-9-.10 is amended by deleting 0250-7-9-.01 through 0250-7-9-.10 in its entirety and adding the following so that as amended the rule shall read:

SUBSTANCE OF PROPOSEDRULES

RULEMAKING HEARING RULES OF THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES CHILD PROTECTIVE SERVICES

CHAPTER 0250-7-9 DUE PROCESS PROCEDURES FOR RELEASE OF CHILD ABUSE/NEGLECT RECORDS

AMENDMENTS

Rule 0250-7-9-.01 through 0250-7-9-.10 Due Process Procedures for Release of Child Abuse Records is amended by deleting 0250-7-9-.01 through 0250-7-9-.10 in its entirety and adding the following so that as amended the rule shall read:

TABLE OF CONTENTS

0250-7-9-.01	Scope of Rules	0250-7-9-.05	Stay of Administrative Proceedings
0250-7-9-.02	Classification of Reports of Child Abuse/Neglect as “Indicated”	0250-7-9-.06	Conduct of the Hearing
0250-7-9-.03	When Rights Under this Chapter Attach; “Triggering Events”	0250-7-9-.07	Evidence; Standard of Proof
0250-7-9-.04	Right to Notice and Opportunity for Hearing	0250-7-9-.08	Alleged Perpetrators with Current Access to Children, Emergency Notification
		0250-7-9-.09	Prohibited Releases

0250-7-9-.01 SCOPE OF RULES.

- (1) The rules in this chapter apply to individuals whom the Department of Children’s Services identifies or proposes to identify as a perpetrator of physical abuse, sexual abuse, or severe child abuse as defined in Parts 1, 4, or 6 of Chapter I of Title 37 of the Tennessee Code Annotated. These rules shall further apply only when such identification is released or proposed to be released to:
 - (a) the individual’s employer whether the individual is a paid employee or under contract;
 - (b) the licensing authority of the employer or the individual, or;
 - (c) any other organization with which the individual is associated as a paid employee or contractor, or volunteer; whether such individual is providing instruction, care, supervision, or treatment in a:
 1. child care agency as defined in T.C.A. §37-5-501 et seq.;
 2. public or private school for children;
 3. residential or institutional child caring organization;
 4. through self-employment;
 5. or any other organization.
- (2) Such release shall be for the purposes of protecting children from further abuse and for the purposes directly connected with the administration of T.C.A. §§ 37-1-101 et seq.; 37-1-401 et seq.; 37-1-601 et seq.;

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

0250-7-9-.02 CLASSIFICATION OF REPORTS OF CHILD ABUSE/ NEGLECT AS “INDICATED”; CRITERIA.

- (1) A report of child abuse or neglect by the alleged perpetrator may be classified as “indicated” if there is substantial and material evidence, in light of the entire record, which indicates the individual committed physical abuse, sexual abuse, or severe child abuse as defined in T.C.A. §§ 37-1-102 or 37-1-602. Proof of one or more of the following factors, linking the abusive act(s) to the alleged perpetrator, shall constitute substantial and material evidence, except for the factors in paragraphs (f), (g) (h), and (i), which shall only be corroborative of other evidence:

- (a) medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that physical abuse, sexual abuse, or severe child abuse occurred;
- (b) an admission by the perpetrator;
- (c) the statement of a credible witness or witnesses to the abusive or neglectful act;
- (d) the child victim's statement that the abuse occurred.
 - 1. The following elements should be considered in assessing the credibility of child's statement, factoring in the child's developmental level:
 - (i) the child's ability to describe the incident or incidents, and/or;
 - (ii) the child's ability to give circumstances and a description of the environment that surrounded the incident or incidents, and/or;
 - (iii) the child's ability to provide smaller details that can be corroborated.
- (e) physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;
- (f) physical evidence that could impact the classification decision includes:
 - 1. weapons;
 - 2. instruments utilized in the abuse;
 - 3. photos/videotapes/audiotapes.
- (g) physical evidence in cases of sexual abuse would also include:
 - 1. letters;
 - 2. correspondence;
 - 3. electronic mail including child pornography;
 - 4. sexual "souvenirs";
 - 5. bed, clothing, sheets etc. which contain bodily fluids, pubic hairs and other physical evidence.
- (h) behavioral indicators. The existence of behavioral patterns that may be indicative of child abuse/neglect and corroborates other evidence of abuse/neglect should be examined.
- (i) circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

0250-7-9-.03 WHEN RIGHTS UNDER THIS CHAPTER ATTACH; “TRIGGERING EVENTS.”

- (1) The rights to review and hearing set forth herein are triggered by the classification of an investigated report of physical abuse, sexual abuse, or severe child abuse as an “indicated” case together with the release, under emergency procedures under rule 0250-7-3-.08, or the intended release as otherwise permitted under these rules in non-emergency situations, of the name of any individual providing instruction, care, supervision, or treatment of children, identifying the individual as an “indicated” perpetrator of physical abuse, sexual abuse or severe child abuse, to:
 - (a) the individual’s employer whether the individual is a paid employee or under contract;
 - (b) the licensing authority of the employer or the individual or;
 - (c) other organizations with which the individual is associated as a paid employee, contractor, or volunteer; whether the individual is providing such instruction, care, supervision, or treatment in a:
 1. child care agency as defined in T.C.A. §§37-5-501 et seq.
 2. public or private school for children;
 3. residential or institutional child caring organization;
 4. through self-employment, or;
 5. any other organization.
- (2) The rights to review and hearing are not triggered by release of information concerning the alleged perpetrator from Department records to:
 - (a) any state(s) or federal law enforcement agency(ies) investigating a report of known or suspected child abuse or neglect or any crimes involving children;
 - (b) any state(s) District Attorney or United States Attorney(s) or their authorized assistants, of the judicial districts or agencies involved in investigating or prosecuting crimes against children;
 - (c) any state(s) or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;
 - (d) treatment professionals treating the child, his or her family, or the perpetrator;
 - (e) in-house requests by employees of the Department of Children’s Services for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws of the State of Tennessee including disclosure to other individuals for purposes directly connected with the administration of Title 37, Chapter 1, Parts 4 and 6 or Title 71, Chapter 3, Part 5, of the Tennessee Code Annotated, other than disclosure to the employers, licensing authority other than the Department of Children’s Services, or other organizations, where indicated perpetrators of child abuse are employed, licensed, or associated, providing instruction, care, supervision, or treatment for children;
 - (f) any state(s) or federal social service or other agencies investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;

- (g) any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;
- (h) to the court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer;
- (i) for the purpose of protecting a child or children from physical or severe child abuse, neglect, or child sexual abuse, except in such situation when such court, administrative hearing, board, or hearing officer, other than the Department of Children's Services, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer;
- (j) pursuant to T.C.A. §37-5-512 information regarding DCS child abuse/neglect investigations may be released to the Department of Education and the Department of Human Services for the purposes of relating appropriate licensing and approval action.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

0250-7-9-.04 RIGHT TO NOTICE AND OPPORTUNITY FOR HEARING.

- (1) Except as otherwise provided in this chapter any individual who is identified or is proposed to be identified as set forth in 0250-7-9-.01 as a perpetrator of child abuse in an "indicated" report investigated by the Department and who has received a formal file review which has resulted in the classification of "indicated" report being upheld by the Department, has the right to request and receive an administrative hearing before a hearing officer of the Administrative Procedures Division of the Department. A request for a hearing prior to the receipt of a formal file review pursuant to 0250-7-9-.09 will not be deemed a proper request for a hearing.
- (2) If the review results in a decision that the standards in 0250-7-9-.02 are not met, and the report is therefore, not properly classified as indicated the Department will not release information from its records identifying the individual as a perpetrator of child abuse/neglect to the individual's employer or licensing authority, or other organizations in which the individual provides instruction, care, supervision, or treatment for children. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department.
- (3) The Department will send written notice containing the information specified in paragraph (4) to the individual at his/her last known address within 10 days of the date of the formal file review under 0250-7-9-.09 results in a decision that the report is properly classified as "indicated". Except as otherwise provided in rule 0250-7-9-.09 during this period, and until expiration of the 10-day period specified in paragraph (3)(b) of this rule or until expiration of the time specified in 0250-7-9-.07(2), the Department will not disclose the fact that the individual has been classified by the Department as a perpetrator of child abuse in an "indicated" report, but shall only release the fact that a hearing concerning the individual pursuant to the child abuse laws of this State is pending.
- (4) The notice referred to in paragraph (3) shall contain the following information:

- (a) that the individual is identified as the perpetrator of child abuse in an “indicated” report investigated by the Department of Children’s Services and that the formal file review has classified the report as “indicated”;
 - (b) that the individual has a right to a hearing, and that he/she must contact the local office of the Department of Children’s Services, in writing, within 10 days of the date of the notice, in order to request a hearing.
 - (c) that if the individual fails to request a hearing within 10 days of the date of the notice, he/she will be identified to his/her employer or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment for children, as a perpetrator of physical abuse, sexual abuse, or severe child abuse.
- (5) If the individual requests a hearing within the required time frame, the Department will schedule a hearing and give the individual adequate notice of the hearing, as provided in chapter 0250-5-4.
- (a) The hearing will be held, and an initial order entered therein, within 90 days of the date of the notice required in paragraph (3), or in rule 0250-7-9- 08(3), if applicable, unless:
 - 1. the time limit is extended or waived by agreement of the parties, or for good cause shown, or;
 - 2. the proceedings are stayed, pursuant to 0250-7-9-.05.
- (6) If the individual fails to request a hearing within the required time frame, the individual will be deemed to have forever waived his/her right to a hearing in regard to that report. The report will then be available for dissemination to his/her employer, or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment for children, for the purpose of protecting children from abuse. Provided, however, that the individual may be granted a hearing notwithstanding his/her failure to make a request within the time required by paragraph (4)(b), or by rule 0250-7-9-.08 if applicable if said individual shows good cause for his/her failure to do so. For purposes of this rule, “good cause” is limited to failure to receive the notice referred to in paragraph (3), severe illness, or some other disabling condition, which substantially prevented the individual from requesting a hearing within the required time limit.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

0250-7-9-.05 STAY OF ADMINISTRATIVE PROCEEDINGS.

- (1) If the individual has been arrested or indicted on criminal charges or if a civil or other administrative proceedings alleging child abuse/neglect by the individual, who is the subject of proceedings under these rules, which charge or proceedings are derived from the same allegations resulting in an “indicated” classification under these rules, have been initiated in any court or other administrative proceedings, the following provisions apply:
 - (a) If the arrest, indictment, and/or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of the final order, all administrative proceedings under these rules will be immediately stayed pending final resolution (including appeals) of the judicial administrative proceedings. Provided, however, that the notice specified in, 025-7-9.04(3), or 0250-7-9-.08(3), as appropriate, will, notwithstanding the provisions of this subparagraph, be sent to the individual and the individual will be required to comply with the provisions of 0250-

7-9-.04(4)(b), or 0250-7-9-.08(3)(a)2, as appropriate, in order to preserve any future right to a review or hearing. Except as otherwise provided in 0250-7-9-.08(3)(b), during the stay, the Department will release no information about the individual as to the report in question, except that judicial or administrative proceedings involving allegations of child abuse by the individual are pending before a specified court or administrative proceeding;

- (b) if a criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. § 37-1-602(a)(2), or for any act which would constitute physical abuse, sexual abuse, or severe child abuse as defined in T.C.A. § 37-1-102(10) and (19), or if the individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under T.C.A. § 37-1-602(a)(2) or T.C.A. § 37-1-102(10) and (19), or if any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed, any act which would constitute physical abuse, sexual abuse, or severe child abuse, as defined in T.C.A. § 37-1-102(10) and (19) or any act which constitutes child sexual abuse as defined in T.C.A. § 37-1-602(2), then such conviction and/or adjudication will be conclusive evidence that the individual is the perpetrator classified in the “indicated” report and the individual will have no right to a hearing provided for in 0250-7-9-.04 in regard to that particular report and information on the perpetrator will be released as otherwise permitted under these rules;
 - (c) if the criminal and/or civil or administrative proceeding does not result in a conviction and/or finding as specified in (b) above, including pretrial diversion, this fact will be admissible in the administrative hearing, but will in no way be conclusive on the issue of whether the report is properly classified as “indicated”.
- (2) If administrative proceedings have been stayed pursuant to this rule, they will be reinstated at the point at which they were stayed if the alleged perpetrator requests such in writing to the local office of the Department of Children’s Services within 30 days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails to make such a written request within the required time period he/she will be deemed to have forever waived his/her rights to a hearing in regard to that report. The indicated report and information regarding the perpetrator will be released as otherwise permitted under these rules.
- (3) Unless the individual has waived his/her rights to a review or hearing by failing to request same under paragraph (1)(a), if administrative proceedings have been stayed, the Department will send the individual written notice advising him/her of the following:
- (a) that administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual;
 - (b) that the administrative proceedings under these rules will be reinstated at the point they were stayed only if the individual requests such in writing to the local office of the Department which issued the original notice within 30 days of the entry of a final order by the court or administrative tribunal or verdict by a criminal court (unless the order or verdict is as specified in paragraph (1)(b) above);
 - (c) if the individual fails to make such a written request within the required time period, he/she will be deemed to have forever waived his/her rights to a hearing in regard to the report.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

0250-7-9-.06 CONDUCT OF THE HEARING

- (1) The hearing provided for in 0250-7-9-.04 will be conducted in accordance with the provisions of the “Uniform Administrative Procedures Act” and the rules of the Administrative Procedures Division of the Department of Children’s Services.
- (2) Except as otherwise provided in rule 0250-7-9-.08 the Department will not release the fact that the individual has been named as a perpetrator of child abuse in an “indicated” report until the individual has exhausted all of his/her appeal rights under this chapter, up to, but not including judicial review unless a stay is ordered pursuant to T.C.A. §4-5-322(e), or until said rights are waived. In the interim, the Department shall release the fact that an investigation or hearing concerning the individual pursuant to the child abuse laws of the State is pending.
- (3) If the final order of the Department, or of a court of competent jurisdiction in the event of judicial review, is that the report is not properly classified as “indicated”, according to the standards in 0250-7-9-.02 the Department will not identify the individual to the individual’s employer or licensing authority or other organization in which the individual provides instruction, care, supervision or treatment for children, as a perpetrator of child abuse. The Department, if it has indicated to the entity that its employee, or licensee or other person providing instruction, care, supervision or treatment for children who was under investigation was the subject of a “indicated” report, will notify the entity of the fact that the report was not properly classified as “indicated”. Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

0250-7-9-.07 EVIDENCE; STANDARD OF PROOF.

- (1) Admissibility of evidence in hearings pursuant to 0250-7-9-.04 is governed by the provisions of T.C.A. §4-5-313. Provided, however, that “evidence admissible in a court” shall, for purposes of hearings pursuant to this chapter, refer also to evidence admissible in any juvenile court of this state, pursuant to the Tennessee rules of Juvenile Procedure. Provided further that the evidentiary provisions of Title 24, Chapter 7, Part I of the Tennessee Code Annotated and T.C.A. §§37-1-401 et seq. and 37-1-601 et seq., including the use of videotape testimony, shall be applicable to such hearings.
- (2) In hearings pursuant to 0250-7-9-.04 the sole issue for the hearing officer to determine is whether the standards for classifying the report as “indicated”, as provided in 0250-7-9-.02 have been met in that particular case. In making this determination, the hearing officer shall consider whatever relevant and admissible proof the individual offers that the report is not properly classified as indicated and shall further consider any competent and admissible proof concerning the dynamics of child abuse relevant to whether the classification is proper.

Authority: T.C.A. §§4-5-226(b)(2); 4-5-313; 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

0250-7-9-.08 ALLEGED PERPETRATORS WITH CURRENT ACCESS TO CHILDREN; EMERGENCY NOTIFICATION.

- (1) The provisions of this rule apply to individuals identified as a perpetrator of physical abuse, sexual abuse, or severe child abuse in an “indicated” report, who provide instruction, care, supervision, or treatment for

children and who have access to children by virtue of his/her paid or contracted employment or volunteer work in a child care agency, as defined in T.C.A. §§37-5-501 et seq.; or his/her employment by contract or otherwise in public or private schools, residential or institutional child caring organizations; or in any other situation where the perpetrator is self-employed or is employed in an organization in any manner by others, or is a volunteer in any other organization providing instruction, care, supervision, or treatment for children.

- (2) As soon as reasonably possible after the local office has investigated and made a recommendation to indicate a report under the circumstances specified in paragraph (1), the Department will conduct a formal file review provided in 0250-7-9-.04
- (a) In addition to reaching a determination as to whether the report is properly classified as “indicated”, the Commissioner or his/her designee shall make a determination whether the report and investigation reveal an immediate threat to the health, safety, or welfare of a child or children exists.
- (b) If such threat is found to exist, the Department will follow the procedures specified in paragraphs (3), (4), and (5) of this rule. If no such immediate threat is found to exist, the Department will follow the procedure specified in rule 0250-7-9-.04.
- (3) As soon as reasonably possible after a determination has been made that an emergency situation exists, in that there is an immediate threat to the health, safety or welfare to a child or children as specified in paragraph (2)(a) above, the Department will, notwithstanding the provisions of 0250-7-9-.05 send written notice to both the alleged perpetrator and the child care agency, or other employer, person, licensing authority other than the Department of Children’s Services, or other organization with authority or supervision over the alleged perpetrator in the circumstances of paragraph (1) above, whether subject to licensure by the Department or not.
- (a) The notice to the alleged perpetrator will contain the following information:
1. that the individual is identified as the perpetrator of child abuse in an “indicated” report of child abuse and that the Commissioner or designee has upheld the classification as “indicated”;
 2. that the individual has a right to a hearing, and that he/she must contact the local Department of Children’s Services office, in writing, within 10 days of the date of the notice, in order to request a hearing;
 3. that if the individual fails to request a hearing within 10 days of the date of the notice, he/she will remain identified by the Department of Children’s Services to his/her employer, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children as a perpetrator of child abuse;
 4. a statement that the employer, agency, licensing authority, or other supervising organization over the individual or organization with which the individual is associated in providing instruction, care, supervision, or treatment has been notified of the situation, and a copy of the notice to the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment will be attached.
- (b) The notice to the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment shall contain the following:

1. that the named individual has been reported as perpetrator of child abuse, and that the Department has determined that the report is “indicated”, pursuant to State rule 0250-7-9-.02;
 2. that the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children must immediately take action to assure that the individual has no access to or contact with any child in their care until further notice by the Department;
 3. that if the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children fails to take such action, the Department will take action to suspend, revoke, or deny the agency’s license if it is licensed by the Department, or the Department will take such other action as may be necessary to protect the children, pursuant to T.C.A. § 71-3-530;
 4. that the individual has been notified of his/her right to a hearing on the allegations, and that employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children will be notified of the final decision in regard to the allegations.
- (4) If the individual requests a hearing within the required time period, the provisions of 0250-7-9-.04(5) apply. If the individual fails to request a hearing within the required time period, the provisions of 0250-7-9-.04(6) apply.
- (5) Following final resolution of the case, whether by administrative hearing, court order, or waiver by the alleged perpetrator, the Department will notify the employer, agency, licensing authority, boards responsible for licensure or other organizations in which the individual provides instruction, care, supervision, or treatment of children with which the individual is associated in writing of the decision.
- (a) If the classification of the report as “indicated” has been upheld, the employer, agency, licensing authority or other organization in which the individual provides instruction, care, supervision, or treatment of children will be required to continue to assure non-access as provided in paragraph (3)(b)2, and the notice shall so state;
 - (b) if the classification of the report as “indicated” is determined to have been incorrect, the employer, agency, licensing authority, or other organization in which the individual instruction, care, supervision, or treatment of children will not be required to assure non-access as provided in paragraph (3)(b)2, and the notice shall so state;
 - (c) except as provided in paragraph (3), the provisions of rule 0250-7-9-.05 are also applicable to proceedings under this rule.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a); 37-5-501.

0250-7-9-.09 PROHIBITED RELEASES.

- (1) The Department of Children’s Services shall not release information from its records to identify to employers, agencies, licensing authorities other than the Department of Children’s Services, or other organizations, for purposes of pre-employment screening or licensing, the individual as a perpetrator of child abuse/neglect.

- (2) The Department of Children's Services shall not release information from its records to identify, for purposes of responding to a request from an employer, agency, licensing authority, or other supervising organization of an individual or other organization in which the individual provides instruction, care, supervision of, or treatment of children, for purposes of routine or random screening of current employees or associates of these organizations as to their status as perpetrators of child abuse. This shall not be construed to prevent the release of information identifying an individual as a perpetrator of child abuse, as otherwise permitted under these rules following a classification by the Department of Children's Services of a report of child abuse as "indicated" and following exhaustion or waiver of review, hearing remedies, or under emergency release procedures set forth in rule 0250-7-9-.08.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 8th day of May, 2003. (05-05)

**THE DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF FIRE PREVENTION**

There will be a hearing before the Commissioner of Commerce and Insurance or her designee to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann. § 68-120-101. 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 Conference Room A on the 5th floor of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 1:00 p.m. (Central Time) on July 16, 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 initial contact may be made no less than ten (10) days prior to the scheduled meeting date (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 the entire text of this Notice of Rulemaking Hearing, contact Randy Safer, Director of Codes Enforcement at 500 James Robertson Parkway, Davy Crockett Tower, 3rd Floor, Nashville, Tennessee 37243, telephone (615) 741-6246.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-2-2
CODES AND STANDARDS**

AMENDMENTS

Paragraph (1) of Rule 0780-2-2-.01 Adoption by Reference is amended by deleting paragraph (1) in its entirety and substituting the following language so that, as amended, paragraph (1) of rule 0780-2-2-.01 shall read:

- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for fire prevention, fire protection and building construction safety in the State of Tennessee shall be those prescribed in the following publications:
 - (a) International Building Code, (IBC), 2003 edition, including the ICC International Fuel Gas Code, 2003 edition, and the ICC International Mechanical Code, 2003 edition published by the International Code Council, Inc., Birmingham Regional Office, 900 Montclair Road, Birmingham, Alabama 35213-1206.
 - (b) Uniform Fire Code (NFPA 1), 2003 edition, including each reference in NFPA 1, Chapter 2 (excluding NFPA 5000), published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101. Each reference in NFPA 1 Uniform Fire Code, Chapter 2 to an NFPA code or standard shall be deemed to be the edition printed in the National Fire Codes, 2003 edition.

Authority: T.C.A. §§68-120-101 and 68-102-113.

Rule 0780-2-2-.04 Conflicts is amended by deleting the rule in its entirety and substituting the following language so that, as amended rule 0780-2-2-.04 shall read:

- (1) In the event of a conflict or inconsistency between the codes adopted by reference in rule 0780-2-2-.01:
 - (a) the provisions of the International Building Code shall prevail if such conflict or inconsistency relates to height, area restrictions or construction type; and
 - (b) the more stringent code provision shall prevail in all other cases.
- (2) In the event of a conflict or inconsistency between either code adopted by reference in rule 0780-2-2-.01, and Chapter 0780-2-1 (Electrical Installations) of the Rules and Regulations of the State of Tennessee, the provisions of such chapter shall control.
- (3) Nothing in this rule shall abrogate any right of appeal granted under Tenn. Code Ann., Title 68, Chapters 102 and 120.

Authority: T.C.A. §§ 68-120-101 and 68-102-113.

The Notice of Rulemaking set out herein were properly filed in the Department of State on the 30th day of May, 2003. (05-30)

BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 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 August, 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-.03, Board Officers, Consultants, Records, and Meetings, is amended by deleting subparagraph (4) (b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5) and renumbering the remaining paragraphs accordingly, so that as amended, the new subparagraph (4) (b) and the new paragraph (5) shall read:

- (4) (b) Serve as consultant to the Board to make determinations, subject to subsequent ratification by the full Board, of the following:
 - 1. Petitions for stay of Board Orders pursuant to Rule 1360-4-1-.18.
 - 2. Applications by out of state practitioners for permission to consult or operate in Tennessee pursuant to T.C.A. §6 3-5-109(4).
 - 3. Approve or reject special projects pursuant to T.C.A. §63-5-109(5) and T.C.A. §63-5-109(12).
 - 4. Approve or reject agencies employing dental interns, externs or graduates of dental and dental hygiene schools pursuant to T.C.A. §63-5-109(10).
 - 5. Approve or reject research or development projects pursuant to T.C.A. §63-5-109(10).
 - 6. Approve or reject protocols for delivery of services in health care facilities by dental hygienists pursuant to T.C.A. § 63-5-115(d).
 - 7. Any other matter authorized by a majority vote of the Board.

- (5) In addition to the board consultant described in paragraph (4), consultants may be recruited from licensed dentists in Tennessee, who meet certain qualifications including, but not limited to those qualifications required for board membership, to act as rotational (part-time) consultants to the Division to decide the following:
1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
 2. Whether and under what terms a complaint, case or disciplinary action might be settled or closed. Any matter proposed for settlement must be subsequently ratified by the full Board before it will become effective.
 3. Whether and under what terms a complaint might be closed with a letter of warning, letter of concern, or acknowledgement of closure.

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

Rule 0460-2-.06, Specialty Certification, is amended by deleting subparagraph (12) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (12) (a) shall read:

- (12) (a) Specialty Consultants - In addition to the board consultant and his/her duties, as provided in Rule 0460-1-.03, specialty consultants shall be appointed by the board to assist the board in developing, conducting, and grading any of the examinations required for specialty certification. All specialty consultants shall be licensed to practice dentistry in Tennessee and shall hold certification in the specialty for which they are consulting.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-112, and 63-5-113.

Rule 0460-3-.02, Criteria Approval Licensure Process (Reciprocity), is amended by deleting subparagraph (12) (a) in its entirety and renumbering the remaining subparagraphs accordingly.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-114.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of May, 2003.
(05-16)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF NATURAL HERITAGE**

There will be a public hearing before the Tennessee Department of Environment and Conservation, Division of Natural Heritage, acting on behalf of the Commissioner of the Department of Environment and Conservation, to consider amendments of the Rules of the Tennessee Department of Environment and Conservation, Division of Natural Heritage, Chapter 0400-6-2, pursuant to T.C.A. Section 70-8-313. The comments received at this hearing will be presented to the Commissioner of the Tennessee Department of Environment and Conservation for consideration in regards to the proposed rulemaking. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. Section 4-5-204 and will take place in the following location: Ruth Neff Conference Room, Side A, 17th floor, L & C Tower, 401 Church Street, Nashville, TN 37243 on July 18, 2003, at 9:00 A.M. Central Time.

Written comments will be included in the hearing records if received by the close of business on July 18, 2003, at the Division of Natural Heritage, 14th floor, L & C Tower, 401 Church Street, Nashville, TN 37243.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to July 18, 2003 or date such party intends to review such filings, to allow time to provide such aid or services. Contact the EEO/AA Coordinator at 1-888-867-7455 or the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of the entire text of this notice of rulemaking hearing, contact: Claude Bailey, 14th floor, L & C Tower, 401 Church Street, Nashville, TN 37243, (615) 532-0431.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0400-6-2
RARE PLANT PROTECTION AND CONSERVATION REGULATIONS**

AMENDMENTS

Rule 0400-6-2-.04 List of Endangered Species is amended by correcting the entries *Agalinis pseudaphylla* (Pennell) Shinnery, *Cerastium velutinum* Raf., *Ranunculus longirostris* Godr., *Scutellaria arguta* Buckl. (Hairy scullcap), *Trillium pusillum* Michx. var. *ozarkanum* Steyermark, *Trillium pusillum* Michx. var. *pusillum*, and by making the following additions and deletions to the listing of endangered species:

0400-6-2-.04 LIST OF ENDANGERED SPECIES.

Corrections and Additions:

Latin Name	Common Name
<i>Agalinis oligophylla</i> Pennell	Ridge-stem false-foxglove
<i>Calopogon oklahomensis</i> D.H. Goldman	Oklahoma grass-pink
<i>Cerastium arvensis</i> var. <i>velutinum</i> (Raf.) Britt.	Velvety Cerastium
<i>Hypericum adpressum</i> Raf. ex W. Bart.	Creeping St. John's wort
<i>Onosmodium hispidissimum</i> Mack.	Shaggy false gromwell

Pycnanthemum beadlei (Small) Fern.	Beadle's mountain mint
Ranunculus aquatilis var. diffusus Withering	Eastern white water-crowfoot
Thaspium pinnatifidum (Buckl.) Gray	Cutleaf meadow-parsnip
Trillium pusillum Michx.	Least Trillium
Utricularia cornuta Michx.	Horned bladderwort
Viburnum molle Michx.	Softleaf arrow-wood
Vitis rupestris Scheele	Sand grape

Deletions:

Latin Name	Common Name
Glyceria grandis S. Wats.	American mannagrass
Dalea candida Michx. ex Willd.	White prairie-clover

Authority: T.C.A. §70-8-301, et. seq., and T.C.A. §4-5-204.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 30th day of May, 2003. (05-29)

**THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF WATER POLLUTION CONTROL**

There will be hearings before the Division of Water Pollution Control to consider the promulgation of amendments of rules pursuant to the Tennessee Water Quality Act of 1977. 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
August 18, 2003	Memphis	University of Memphis Engineering Dept. Auditorium Room 203 3795 Central Avenue	2:00 p.m. CST
August 18, 2003 CST	Jackson	West Tennessee Experiment Station Agriculture Center 605 Airways Blvd.	7:00 p.m.

August 19, 2003	Nashville	Ellington Agricultural Center Ed Jones Auditorium Hogan Rd	2:00 p.m. CST
August 19, 2003	Shelbyville	Shelbyville Court House One Public Square, Suite 200	7:00 p.m. CST
August 21, 2003	Chattanooga	Chattanooga State Office Building First Floor Auditorium 540 McCallie Avenue	1:00 p.m. EST
August 21, 2003	Cleveland	Cleveland State University Coleman Community Services RM C-106 3535 Adkisson Dr.	7:00 p.m. EST
August 25, 2003	Greenville	Claude Austin 4H Center Class Room 6 214 4H Lane	7:00 p.m. EST
August 26, 2003	Knoxville	Pellissippi State Technical Community College J L Goins Administration Building Hollingworth Auditorium 10915 Hardin Valley Drive	2:00 p.m. EST
August 26, 2003	Cookeville	Tennessee Technological University Pennebaker Hall, Room 128 1100 North Dixie Avenue	7:00p.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, Tennessee 37243 and (615) 532-0059.

For a copy of this notice of rulemaking hearing, contact: Kathryn Mitchell, Division of Water Pollution Control, 6th floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243. Phone: (615) 532-0652; E-mail: Kathy.Mitchell@state.tn.us.

SUMMARY OF PROPOSED RULES

The Tennessee Water Quality Board has initiated the rulemaking process to make revisions to the Tennessee Division of Water Pollution Control's rules governing permits, effluent limits and standards, and the duties of the water quality control board and commissioner. The activities permitted with these revisions include all wastewater discharges, treatment system operations and concentrated animal feeding operations (CAFOs).

1200-4-1-.01 PURPOSE

These rules establish the roles and responsibilities of the water quality control board (the board) and the commissioner with respect to the Tennessee Water Quality Control Act (the act).

1200-4-1-.02 WATER QUALITY CONTROL BOARD: COMPOSITION, CONFLICT OF INTEREST, DUTIES AND AUTHORITY, PROCEDURE

This part requires the board to be composed of three ex-officio members and seven citizen members. This part also refers to Section 69-3-104(e) of the act that govern potential conflicts of interest of board members. Finally, this part sets out the specific duties and authorities of the board and the procedures by which the board performs its duties.

1200-4-1-.03 COMMISSIONER'S RESPONSIBILITIES AND AUTHORITY:

This part refers to the commissioner's responsibilities as defined in Section 69-3-107 of the act. It also sets out the remedies granted to the commissioner pursuant to the act which include complaints and orders, damage assessment, civil and criminal penalties and injunctions.

1200-4-1.04 INFORMATION - PROCUREMENT, RELEASE AND DISTRIBUTION

Section 69-3-113 of the act provides authority to the board or commissioner to seek and obtain pertinent information necessary to further the goals of the Water Quality Control Act. This part serves to implement that Section.

1200-4-5-.01 PURPOSE

Permits are to allow the permit holder to discharge into the waters of the state only after strict compliance with conditions and effluent criteria stated on the face of the permit.

1200-4-5-.02 DEFINITIONS

Several definitions were added from existing Chapter 1200-4-1 and 40 CFR Part 122. In addition terms commonly used in permits were added as well as those associated with CAFO activities. All terminology not specifically defined herein shall be defined in accordance with the Water Quality Control Act, Tennessee Code Annotated Sections 69-3-101 through 69-3-129.

1200-4-5-.03 THROUGH 1200-4-5-.13

The rule revisions include several additions to provide consistency with 40 CFR Part 122. Minor changes to public notice procedures are also proposed. Finally, 1200-4-5-.12 sets out the procedures available to affected persons who disagree with the denial, terms, or conditions of a permit.

1200-4-5-.14 ANIMAL FEEDING OPERATIONS

In addition to the provisions of 1200-4-5-.03 through 1200-4-5-.13 that are applicable to all NPDES permits, CAFOs are also subject to the following provisions of this section, 1200-4-5-.14 as summarized.

- (1) All operations defined as CAFOs must seek coverage under an NPDES permit.
- (2) AFOs meeting or exceeding the EPA size thresholds as shown in column 1 of Table 1200-4-5.14.I are considered large.
- (3) AFO within EPA size thresholds as shown in column 2 of Table 1200-4-5.14.I are considered medium (i.e., Class II).

TABLE 1200-4-5-.14.I

Animal Type	Class I (Large CAFO)	Class II (Medium CAFO)
Dairy Cows	700 +	200 – 699
Cattle	1,000+	300 – 999
Swine	2,500+ (≥ 55 lbs) 10,000+ (≤ 55 lbs)	750 – 2,499 (≥ 55 lbs) 3,000 – 9,999 (≤ 55 lbs)
Chickens (liquid)	30,000+	9,000 – 29,999
Chickens (dry)	125,000+ (non-layers) 82,000+ (layers)	37,500 – 124,999 (non-layers) 25,000 – 81,999 (layers)
Horses	500+	150 – 499
Sheep/lambs	10,000+	3,000 – 9,999
Turkeys	55,000+	16,500 – 54,999
Ducks	5,000+ (liquid) 30,000+ (dry)	1,500 – 4,999 (liquid) 10,000 – 29,999 (dry)

- (4) At the discretion of the director other AFOs may be designated as CAFOs based upon certain factors.

A CAFO may request that it be determined to have no potential to discharge manure, litter or process wastewater to waters of the state. The CAFO owner or operator must submit requested information in accordance with (6)(a)-(i). The director and department will respond to the owner in accordance with (7) (a)-(c), (8) (a)-(d) and (9). If circumstances materially change at a CAFO that has been determined to have no potential to discharge, such that the CAFO has a potential for discharge, the CAFO must immediately notify the director, and seek coverage under an NPDES permit within 30 days after the change in circumstances.

Any permit issued to a CAFO must develop, implement and keep on site a site-specific nutrient management plan that includes best management practices and procedures necessary to implement applicable effluent limitations and standards. The plan must ensure adequate manure, litter, and process wastewater storage, including procedures to ensure proper operation and maintenance of the storage facilities. The plan must ensure proper management of mortalities (i.e. dead animals) such that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities. All other requirements for nutrient management plan are in accordance with (15)(a)(5)-(11).

A certified nutrient management plan will apply for all dairy, cattle, swine, poultry and veal CAFOs that land apply manure, litter, or process wastewater. CAFOs must do so in accordance with the best management practices (BMPs) that are implemented through a nutrient management plan that incorporates a field-specific assessment of the potential for nitrogen and phosphorus

transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters. The application rates for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO that minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the technical standards for nutrient management. The standards must include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals. The plan must employ the Tennessee Phosphorus Index, developed by the University of Tennessee Extension Service and NRCS. The plan must also include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards. All other analysis, inspections and requirements for a nutrient management plan are in accordance with (16)(b)-(d).

A 3rd party disposal plan must be submitted by all CAFO operations that transfer 20 tons or more of manure, litter and process wastewater per year to a 3rd party.

A certified educational program will be implemented. All managing owners/operators and on site supervisors of permitted CAFO operations must obtain certification of satisfactory completion of formal education or training in the areas of general BMPs, comprehensive waste/ wastewater management, land application, nutrient budgeting, dead animal disposal, and other appropriate areas. Deadlines for obtaining the education/training shall be in accordance with (18) (a) and (b).

Application deadlines and reissuance requirements for AFOs defined as CAFOs shall be as follows: Operations defined as CAFOs prior to April 14, 2003, must have or seek coverage under an NPDES permit; or request a determination of “no potential to discharge” as of April 14, 2003. Existing operations defined as CAFOs only as of April 14, 2003, must seek NPDES permit coverage no later than February 13, 2006. All other deadlines and reissuance requirements shall be in accordance with (11) (c)-(f) – (14).

CAFO permits will include reporting requirements. All reporting requirements not mentioned below can be found in (15)(b). The permittee shall be required to create, maintain for five years, and make available to the director, upon request, the following records:

1. a copy of the CAFOs site-specific nutrient management plan,
2. all applicable records identified in paragraph (15) (a) 10,
3. documentation of the visual inspections for storm water diversion devices, runoff diversion structures, devices channeling contaminated store water to the wastewater and manure storage and containment structure; water lines; manure, litter and process wastewater impoundments and liquid level in the impoundments,
4. depth of the manure and process wastewater in the liquid impoundment,
5. any corrective actions taken (if deficiencies are not corrected within 30 days of notice of deficiency),
6. mortalities management and practices used to comply with the nutrient management plan,

7. current design of any manure or litter storage structures,
8. date, time, and estimated volume of any overflow,
9. expected crop yields,
10. dates manure, litter, or process waste water is applied to each field,
11. calculations showing the total nitrogen and phosphorus to be applied to each field,
12. method used to apply the manure, litter or process wastewater, and
13. dates of manure application equipment inspection.

CAFOs will submit an annual report that includes: the number and type of animals, type of confinement, estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallon), summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months and a statement indicating whether the current version of the CAFOs nutrient management plan was developed or approved. All annual report requirements not listed above can be found in (15)(b).

No CAFO animal waste management system shall be constructed, modified, repaired, or placed into operation after April 13, 2006, unless it is designed, constructed, operated, and maintained in accordance with final design plans and specifications which meet or exceed standards in the NRCS Field Office Technical Guide and other guidelines as accepted by the Departments of Environment and Conservation, or Agriculture. Specifically, plans must comply with (19)(a)-(d).

The Department of Agriculture will require that the owner/operator submit a closure/rehabilitation plan for waste system storage/treatment structure(s) at least 30 day prior to the final day of operation should a CAFO cease operation. All other requirements the plan must include will be in accordance with (20).

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 30th day of May, 2003.
(05-33)

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-24-605. 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 17th day of July, 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

AMENDMENT

Rule 1200-30-1-.10, Supervision, is amended by deleting paragraphs (1), (2), (3), and (4) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), (4), and (5) shall read:

- (1) Pursuant to Rule 1200-30-1-.04, an applicant for licensure as an alcohol and drug abuse counselor shall present evidence, at the time the application is submitted, of successful completion of six thousand (6000) hours of clinical experience supervised by a supervisor who meets the requirements of paragraphs (2) or (3).
 - (a) One hundred (100) hours of the six thousand (6000) hour requirement shall be face-to-face supervision.
 1. No more than fifty (50) hours of the one hundred (100) hours may occur during any calendar year in which part of the six thousand (6000) supervised hours transpire.
 2. No less than twelve (12) hours of the one hundred (100) hours may occur during any calendar year in which part of the six thousand (6000) supervised hours transpire.
 - (b) Group supervision may occur provided that the applicant has a minimum of six (6) face--to face individual hours per year.
 - (c) Documentation includes, but is not limited to, dates of supervision, beginning and ending times, names of clinicians present, topic areas discussed, clinical recommendations, follow up on previous recommendations, -professional issues/concerns, professional development needs/accomplishments, and number of cases reviewed per clinical participant with signatures of supervisor and all supervision participants.
 - (d) The supervisor shall follow methods of supervision used in accordance with a standard practice

- (e.g., Family Systems, Transactional Analysis, Reality Therapy, Gestalt, Psychodrama, etc.) or a combination of standard practices of the supervisor's choice.
- (e) The supervisor shall maintain copies of records of supervision for eight (8) years. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.
 - (f) Failure to conduct supervision in accordance with these rules or falsification of the records of supervision is considered a breach of professional conduct and may result in disciplinary action as provided in Rule 1200-30-1-.15.
- (2) Before supervision may begin, the supervisor of an applicant for licensure as an alcohol and drug abuse counselor shall obtain from the Board a Certificate of Qualified Clinical Supervision by meeting the following requirements:
- (a) The supervisor has been a licensed alcohol and drug abuse counselor for at least five (5) years; and
 - (b) The supervisor has two (2) years experience supervising alcohol and drug abuse counselors or has received at least thirty six (36) contact (clock) hours of supervision (by an approved supervisor) of his supervisory work by supervision of at least one (1) person doing alcohol and drug abuse counseling.
- (3) An applicant whose supervisor meets the requirements of paragraph (2) but is not licensed in Tennessee as an alcohol and drug abuse counselor may submit, with the licensure application, an approval request to the Board that documents the supervisor's qualifications. This request must include means by which verification of the qualifications may be independently confirmed (e.g., contact data for other state licensing or certification agencies, NAADAC, or proof of supervision).
- (4) Supervision that is consistent with the regulations that were effective prior to the effective date of this rule amendment will be accepted as qualified supervision.
- (a) Licensees providing clinical supervision when these rules become effective will be permitted to continue supervising applicants whose supervision had already begun.
 - (b) Under no circumstances shall a licensee begin providing new clinical supervision without meeting the requirements of paragraphs (2) or (3).
- (5) Conflict of Interest – Supervision provided by the applicant's parents, spouse, former spouse, siblings, children, cousins, in laws (present or former), aunts, uncles, grandparents, grandchildren, stepchildren, employees, present or former counselor, present or former romantic partner, or anyone sharing the same household shall not be acceptable toward fulfillment of licensure requirements. Any exceptions must be approved by the Board prior to such supervision. For the purposes of this rule, a supervisor shall not be considered an employee of the applicant, if the only compensation received by the supervisor consists of payments for the actual supervisory hours.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of May, 2003.
(05-06)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 21st day of July, 2003.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247 0508, (615) 741 7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

Rule 1200-8-1-.02, Licensing Procedures, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Each hospital, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter shall pay annually to the department a fee based on the number of hospital beds, as follows:
- | | |
|------------------------------|-----------|
| (a) Less than 25 beds | \$ 600.00 |
| (b) 25 to 49 beds, inclusive | \$ 800.00 |
| (c) 50 to 74 beds, inclusive | \$ 950.00 |

(d)	75 to 99 beds, inclusive	\$ 1,100.00
(e)	100 to 124 beds, inclusive	\$ 1,250.00
(f)	125 to 149 beds, inclusive	\$ 1,400.00
(g)	150 to 174 beds, inclusive	\$ 1,550.00
(h)	175 to 199 beds, inclusive	\$ 1,700.00

For hospitals of two hundred (200) beds or more the fee shall be one thousand seven hundred dollars (\$1,700.00) plus one hundred fifty dollars (\$150.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds the said fee to be submitted with the application or renewal.

Authority: T.C.A. §§4-5-201, 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

Rule 1200-8-1-.04, Administration, is amended by adding the following language as new paragraph (9), so that as amended, the new paragraph (9) shall read:

- (9) Critical Access Hospital only.
 - (a) The facility shall enter into agreements with one or more hospitals participating in the Medicare/Medicaid programs to provide services which the Critical Access Hospital is unable to provide.
 - (b) When there are no inpatients, the facility is not required to be staffed by licensed medical professionals, but must maintain a receptionist or other staff person on duty to provide emergency communication access. The hospital shall provide an effective system to ensure that a physician or a mid-level practitioner with training and experience in emergency care is on call and immediately available by telephone or radio and available on site within thirty (30) minutes, twenty-four (24) hours a day.

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

Rule 1200-8-1-.06, Basic Hospital Functions, is amended by adding the following language as new paragraph (10), so that as amended, the new paragraph (10) shall read:

- (10) Critical Access Hospital.
 - (a) Every patient may be under the care of a physician or under the care of a mid-level practitioner supervised by a physician.
 - (b) Whenever a patient is admitted to the facility by a mid-level practitioner, the supervising physician shall be notified of that fact, by phone or otherwise, and within 24 hours the supervising physician shall examine the patient or before discharge if discharged within 24 hours, and a plan of care be placed in the patient's chart, unless the patient is transferred to a higher level of care within 24 hours.

- (c) A physician, a mid-level practitioner or a registered nurse shall be on duty and physically available in the facility when there are inpatients.
- (d) A physician on staff shall:
 - 1. Provide medical direction to the facility's health care activities and consultation for non-physician health care providers.
 - 2. In conjunction with the mid-level practitioner staff members, participate in developing, executing, and periodically reviewing the facility's written policies and the services provided to patients.
 - 3. Review and sign the records of each patient admitted and treated by a practitioner no later than fifteen (15) days after the patient's discharge from the facility.
 - 4. Provide health care services to the patients in the facility, whenever needed and requested.
 - 5. Prepare guidelines for the medical management of health problems, including conditions requiring medical consultation and/or patient referral.
 - 6. At intervals no more than two (2) weeks apart, be physically present in the facility for a sufficient time to provide medical direction, medical care services, and staff consultation as required.
 - 7. When not physically present in the facility, either be available through direct telecommunication for consultation and assistance with medical emergencies and patient referral, or ensure that another physician is available for this purpose.
 - 8. The physical site visit for a given two week period is not required if, during that period, no inpatients have been treated in the facility.
- (e) A mid-level practitioner on staff shall:
 - 1. Participate in the development, execution, and periodic review of the guidelines and written policies governing treatment in the facility.
 - 2. Participate with a physician in a review of each patient's health records.
 - 3. Provide health care services to patients according to the facility's policies.
 - 4. Arrange for or refer patients to needed services that are not provided at the facility.
 - 5. Assure that adequate patient health records are maintained and transferred as necessary when a patient is referred.
- (f) The Critical Access Hospital, at a minimum, shall provide basic laboratory services essential to the immediate diagnosis and treatment of patients, including:
 - 1. Chemical examinations of urine stick or tablet methods, or both (including urine ketoses);

2. Microscopic examinations of urine sediment;
3. Hemoglobin or hematocrit;
4. Blood sugar;
5. Gram stain;
6. Examination of stool specimens for occult blood;
7. Pregnancy test;
8. Primary culturing for transmittal to a CLIA certified laboratory;
9. Sediment rate; and,
10. CBC.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of May, 2003. (05-12)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 21st day of July, 2003.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES**CHAPTER 1200-8-6
STANDARDS FOR NURSING HOMES****CHAPTER 1200-8-10
STANDARDS FOR AMBULATORY SURGICAL TREATMENT CENTERS****CHAPTER 1200-8-11
STANDARDS FOR HOMES FOR THE AGED****CHAPTER 1200-8-15
STANDARDS FOR RESIDENTIAL HOSPICE****CHAPTER 1200-8-24
STANDARDS FOR BIRTHING CENTERS****CHAPTER 1200-8-25
STANDARDS FOR ASSISTED-CARE LIVING FACILITIES****CHAPTER 1200-8-26
STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME HEALTH SERVICES****CHAPTER 1200-8-27
STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOSPICE SERVICES****CHAPTER 1200-8-28
STANDARDS FOR HIV SUPPORTIVE LIVING FACILITIES****CHAPTER 1200-8-29
STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT****AMENDMENTS**

Rule 1200-8-6-.02, Licensing Procedures, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Each nursing home, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter, shall pay annually to the department a fee based on the number of nursing home beds, as follows:
- | | | |
|-----|----------------------------|-------------|
| (a) | Less than 25 beds | \$ 600.00 |
| (b) | 25 to 49 beds, inclusive | \$ 800.00 |
| (c) | 50 to 74 beds, inclusive | \$ 950.00 |
| (d) | 75 to 99 beds, inclusive | \$ 1,100.00 |
| (e) | 100 to 124 beds, inclusive | \$ 1,250.00 |

(f)	125 to 149 beds, inclusive	\$ 1,400.00
(g)	150 to 174 beds, inclusive	\$ 1,550.00
(h)	175 to 199 beds, inclusive	\$ 1,700.00

For nursing homes of two hundred (200) beds or more the fee shall be one thousand seven hundred dollars (\$1,700.00) plus one hundred fifty dollars (\$150.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal. When additional beds are licensed, the licensing procedures for new facilities must be followed and the difference between the fee previously paid and the fee for the new bed capacity, if any, must be paid.

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

Rule 1200-8-10-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee in the amount of eight hundred dollars (\$800.00). The fee must be submitted with the application and is not refundable.

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

Rule 1200-8-11-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee based on the number of beds as follows:
 - 1. Less than 25 beds \$ 600.00
 - 2. 25 to 49 beds, inclusive \$ 800.00
 - 3. 50 to 74 beds, inclusive \$ 950.00
 - 4. 75 to 99 beds, inclusive \$ 1100.00
 - 5. 100 to 124 beds, inclusive \$ 1250.00
 - 6. 125 to 149 beds, inclusive \$ 1400.00
 - 7. 150 to 174 beds, inclusive \$ 1550.00
 - 8. 175 to 199 beds, inclusive \$ 1700.00

For homes of two hundred (200) beds or more the fee shall be one thousand seven hundred dollars (\$1700.00) plus one hundred fifty dollars (\$150.00) for each twenty-five (25) beds or fraction thereof. The fee shall be submitted with the application or renewal and is not refundable.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-210, and 68-11-216.

Rule 1200-8-15-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee of \$800.00. The fee must be submitted with the application and is not refundable.

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

Rule 1200-8-24-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee of \$800.00. The fee must be submitted with the application and is not refundable.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-210, and 68-11-216.

Rule 1200-8-25-.02, Licensing Procedures, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Each ACLF, except those operated by the U.S. Government or the State of Tennessee, making application for license under this chapter, shall pay annually to the department a fee based on the number of ACLF beds, as follows:

(a)	Less than 25 beds	\$ 600.00
(b)	25 to 49 beds, inclusive	\$ 800.00
(c)	50 to 74 beds, inclusive	\$ 950.00
(d)	75 to 99 beds, inclusive	\$ 1,100.00
(e)	100 to 124 beds, inclusive	\$ 1,250.00
(f)	125 to 149 beds, inclusive	\$ 1,400.00
(g)	150 to 174 beds, inclusive	\$ 1,550.00
(h)	175 to 199 beds, inclusive	\$ 1,700.00

For ACLF's of two hundred (200) beds or more the fee shall be one thousand seven hundred dollars (\$1,700.00) plus one hundred fifty dollars (\$150.00) for each additional twenty-five (25) beds or fraction thereof. The fee shall be submitted with the application or renewal.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-210, and 68-11-216.

Rule 1200-8-26-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee of \$800.00. The fee must be submitted with the application and is not refundable.

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

Rule 1200-8-27-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee of \$800.00. The fee must be submitted with the application and is not refundable.

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

Rule 1200-8-28-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee of \$800.00. The fee must be submitted with the application and is not refundable.

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

Rule 1200-8-29-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Each applicant for a license shall pay an annual license fee of \$800.00. The fee must be submitted with the application and is not refundable.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of May, 2003. (05-11)

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

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 15th Floor, Puett Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30p.m. CDT on, Wednesday, July 16, 2003.

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

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

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

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

AMENDMENTS

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

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

(1) Families First Cash Assistance Standards

- (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
- (b) Gross Income Standard (GIS). This standard is set at One Hundred Eighty-Five Percent (185%) of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the Assistance Group (AG) is not eligible for Families First.
- (c) Standard Payment Amount (SPA). Tennessee does not meet One Hundred Percent (100%) of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on available State and Federal funds is paid, except in the instances specified in 1240-1-50-.20(e).
- (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets

any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.

(e) Family Benefit Cap

1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by T.C.A. § 71-3-151, unless:
 - (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First; or
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home.
2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt of cash assistance for an eighteen (18)-month eligibility period during which the child was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.
 - (i) Departmental policies and rules with which the parent/caretaker must cooperate include, but are not limited to:
 - (I) Child support cooperation requirements, such as identifying the absent parent, meeting with child support enforcement staff, submitting a child for blood testing, and testifying in court if necessary;
 - (II) Carrying out and fulfilling Personal Responsibility Plan provisions and requirements; or

(III) Carrying out and fulfilling Work Plan provisions and requirements.

(f) An assistance payment is determined as follows:

1. If the assistance group’s net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
2. If the assistance group’s net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.

In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income

from the CNS, to determine the actual amount of Families First payment for the AG										
Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
The minimum monthly grant which can be paid is ten dollars (\$10).										
3. Gross Income Standard	993	1367	1628	1708	2057	2076	2263	2281	2503	2516
1. Consolidated Need Standard	536	739	880	923	1112	1122	1223	1233	1353	1360
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

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

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2596	2664	2725	2779	2823	2862	2893	2927	2951	2973
Consolidated Need Standard	1403	1440	1473	1502	1526	1547	1564	1582	1595	1607
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

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

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	992	1367	1628	1708	2057	2076	2263	2281	2503	2516
Consolidated Need Standard	536	739	880	923	1112	1122	1223	1233	1353	1360
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

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

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2596	2664	2725	2779	2823	2862	2893	2927	2951	2973
Consolidated Need Standard	1403	1440	1473	1502	1526	1547	1564	1582	1595	1607
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

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

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 21.0% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 26.4% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2002-2003.
3. Standard for Families First Transitional Services
 - (i) Families First assistance groups and other low income families may receive transitional services after the Families First case closes.
 - (ii) For purposes of this Part, “transitional services” is defined as services to assist the customer in attaining long-term self-sufficiency.
 - (iii) Transitional services will be provided subject to the continued availability of state and/or federal funding.
 - (iv) In order to receive these services, the assistance group’s gross monthly income must meet a standard of need.

- (v) The standard of need for transitional services under this Part is defined as Two Hundred Percent (200%) of the Federal poverty level for the assistance group family size. The standard of need for this Part does not apply to Transitional Child Care or Transitional Medicaid.

Authority: TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)- (g); Senate Bill 1994/House Bill 2074 (2003); 42 USCA §§ 601 et seq.; 45 CFR 233.20; and 42 USCA § 1315.

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of May, 2003. (05-22)

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

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 2nd Floor, Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 6:30 p.m. CDT on Thursday July 17, 2003.

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

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

SUMMARY OF PROPOSED RULES

**CHAPTER 1240-4-2
LICENSURE RULES FOR DROP-IN CHILD CARE CENTERS**

NEW RULES

TABLE OF CONTENTS

1240-4-2-.01	Purpose, Scope and General Licensing Requirements	1240-4-2-.06	Equipment for Children Program
1240-4-2-.02	Definitions	1240-4-2-.07	Health and Safety
1240-4-2-.03	Application Procedures	1240-4-2-.08	Physical Facilities
1240-4-2-.04	Organization and Administration	1240-4-2-.09	Care of Children with Disabilities
1240-4-2-.05	Staff Requirements	1240-4-2-.10	

Chapter 1240-4-2 establishes the standards for defining, inspection, licensing, and regulation of facilities that provide “drop-in” child care services.

Chapter 1240-4-2 is organized according to the following structure:

1240-4-2-.01. Purpose, Scope and General Licensing Requirements – States the purpose of licensing, the scope of services for these rules, and the basis for approval of a license for drop-in child care.

1240-4-2-.02. Definitions- Definitional section for terms commonly under in this Chapter.

1240-4-2-.03. Application Procedures – Describes the process associated with obtaining and submitting an application for licensure. It outlines minimum requirements for issuing a temporary license, and the evaluation process used to issue or deny an annual license. It describes the Department’s right of inspection, the re-evaluation process, and the requirements for posting the license in the facility. It also states that the licensing procedures for drop-in facilities are subject to the requirements of Chapter 1240-4-5, Procedures Affecting Licenses of Child Care Agencies. It establishes that the annual application fee for this type of care is Two Hundred Dollars (\$200.00).

1240-4-2-.04 Ownership, Organization and Administration - Requires a written statement of purpose of agency that includes a description of the services offered to children and parents, ages of children served, hours of operation, number and type of meals served, admission requirements, and provisions for emergency medical care. It requires that the organization of the agency be clearly defined and that each facility have an on-site director. It establishes that general liability and medical payment insurance coverage shall be maintained on the operations of the facility. It also describes the records and reports on children and staff that must be maintained at the agency. Describes the privacy/confidentiality requirements for information concerning children and families. The subchapter outlines the requirements for admission of children and communication with parents. Parents must disclose the types of activities that they will be engaged in while the child attends the program and provide an estimate of the time the child will be in care. It establishes that children are not permitted in drop-in care for more than six (6) hours in a twenty-four (24) hour period or more than ten (10) hours per week . This section also clearly states that transportation by drop-in care facilities is prohibited.

1240-4-2-.05. Staff Requirements - Makes applicant/licensee/director responsible for staff. Excludes staff for certain crimes involving violence, mistreatment of children, and sale or possession of drugs and outlines the procedures for required fingerprinting and background checks. Sets staff qualifications and requires probationary period for employees, and orientation program for employees which includes child abuse detection.

1240-4-2-.06. Equipment for Children-Establishes standards for types and quality of equipment used in indoor and outdoor play activities of children as well as equipment for napping/sleeping.

1240-4-2-.07. Program-Prescribes standards for the types of activities children should have while at the child care center, limitation on the use of television, standards of behavior management, and developmental activities. States that swimming is prohibited.

1240-4-2-.08. Health and Safety- Establishes the supervision and grouping requirements for children. Describes the requirements for care of children under six (6) months of age who are susceptible to Sudden Infant Death Syndrome. Requires a health statement for children older than eight (8) weeks, and a description of any condition that requires special care. Children are to be checked for communicable disease during day, and accidents and injuries to children shall be documented. Injuries of more than a minor nature shall be reported to the parent as soon as possible. This section also sets forth the requirements for nutrition, meals, and administering medication. Smoking, firearms, or any activity on the premises or property which may place children at risk is prohibited. This section includes requirements for diapering, cleaning and sanitizing, and staff health. Requires that at least one staff member who has current certification or equivalent in infant/child CPR, and one staff member who has current certification or equivalent in infant/child first aid on duty at all times. First aid information and kit must be available to staff. Drop-in center must consult with local authorities to develop written disaster plan and emergency phone numbers must be posted next to phones and available to all staff. This section also describes the requirements associated with investigation of child abuse and neglect; custodial authority of children.

1240-4-2-09. Physical Facilities - Sets forth standards for new facilities or major renovations of child-caring facilities and the requirements for approval by fire and health authorities and requirements for annual inspection, space requirements for children, as well as the prevention of hazards involving space provided. Trampolines are prohibited.

1240-4-2-.10. Care of Children With Disabilities – Requires that all reasonable and appropriate efforts shall be made to provide disabled children an equal opportunity to participate in the same program as their peers, and specific written emergency plans for children who may require more assistance during an emergency.

Authority: T.C.A. §71-3-502, et. seq.

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

The Notice of Rulemaking set out herein were properly filed in the Department of State on the 30th day of May, 2003. (05-38)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-6-201, 63-6-207, 63-6-209, 63-6-210, 63-6-211, 63-6-214, 63-6-230, 63-6-233, and Public Chapter 11 of the Public Acts of 2003 . 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 Rm. of the Cordell Hull Building located at 425 5th Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 17th day of July, 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, 1st Fl., Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247 1010, (615) 532 4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0880-2-.02 Fees, is amended by deleting subparagraphs (1) (c) and (1) (f) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (c) and (1) (f) shall read:

- (1) (c) Inactive Volunteer Licensure Renewal Fee \$ 0.00
- (1) (f) Licensure Renewal Fee - To be paid biennially by all \$225.00
 licensees except Inactive Volunteers. This fee also
 applies to licensees who reactivate a retired license or
 who reactivate an inactive license.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-6-210, 63-6-211, and 63-6-230.

Rule 0880-2-.03 Licensure Process-U.S. and Canada Medical School Graduates, is amended by deleting subparagraph (12) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (12) (c) shall read:

- (12) (c) Inactive volunteer licenses are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-2-.09 and .10, and are subject to all rules governing continuing medical education as provided by rule 0880-2-.19. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-6-210, 63-6-214, 63-6-230, and 63-6-233.

Rule 0880-2-.04 Licensure Process-International Medical School Graduates, is amended by deleting subparagraph (15) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (15) (c) shall read:

- (15) (c) Inactive volunteer licenses are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-2-.09 and .10, and are subject to all rules governing continuing medical education as provided by rule 0880-2-.19. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-210, 63-6-211, 63-6-214, 63-6-230, and 63-6-233.

Rule 0880-2-.05 Licensure of Out-of State and International Applicants, is amended by deleting paragraph (5) and subparagraph (11) (c) in their entirety and substituting instead the following language, so that as amended, the new paragraph (5) and the new subparagraph (11) (c) shall read:

- (5) An applicant shall submit with the application the licensure fee as provided in rule 0880-2-.02 (1) (a) and the state regulatory fee as provided in rule 0880-2-.02 (1) (g).
- (11) (c) Inactive volunteer licenses are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-2-.09 and .10, and are subject to all rules governing continuing medical education as provided by rule 0880-2-.19. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-6-210, 63-6-211, 63-6-214, 63-6-230, and 63-6-233.

Rule 0880-2-.06 Training Licenses and Licensure Exemptions, is amended by deleting part (4) (a) 4. and subparagraph (4) (b) in their entirety and substituting instead the following language, so that as amended, the new part (4) (a) 4. and the new subparagraph (4) (b) shall read:

- (4) (a) 4. The licensure exemption fee as established in rule 0880-2-.02 (1) (k) for each participant.
- (4) (b) The application for exemption from licensure is effective, if approved, for a period of no longer than one (1) year from the date of approval. Exemption applications previously approved need not be re-filled for the individuals continuing in the program beyond one (1) year expiration date. However, the program is subject to payment of the fee provided in rule 0880-2-.02 (1) (k) as the annual deadline expires for each such individual.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-201, and 63-6-207.

Rule 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure, is amended by deleting subparagraph (8) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (c) shall read:

- (8) (c) Inactive volunteer licenses issued to those who previously held only a Tennessee locum tenens license are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-2-.09 and .10, and are subject to all rules governing continuing medical education as provided by rule 0880-2-.19. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-209, 63-6-210, 63-6-214, 63-6-230, and 63-6-233.

Rule 0880-2-.08 Examinations, is amended by deleting subparagraph (4) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (4) (b) shall read:

- (4) (b) USMLE - Seven (7) years from the date on which Step 1 was successfully completed.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-207, 63-6-209, 63-6-211, and Public Chapter 11 of the Public Acts of 2003.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of May, 2003. (05-20)

BOARD OF OPTOMETRY - 1045

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 5th Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 25th day of August, 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, 1st Fl., Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247 1010, (615) 532 4397.

For a copy of the entire text of this notice of rulemaking hearing 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 1045-2-.01, Fees, is amended by deleting subparagraph (1) (d), in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (1) (e), and is further amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (d) and (1) (e), and the new paragraph (2) shall read:

- (1) (d) Licensure Renewal Fee - To be paid biennially by all licensees except Inactive Volunteers. This fee also applies to licensees who reactivate a retired license or who reactivate an inactive license. \$ 230.00
- (1) (e) Inactive Volunteer Licensure Renewal Fee \$ 0.00
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Optometry.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-8-112, 63-8-119, and 63-8-133.

Rule 1045-2-.05, Continuing Education, is amended by deleting part (2) (c) 2. in its entirety and substituting instead the following language, so that as amended, the new part (2) (c) 2. shall read:

- (2) (c) 2. practice management; the total number of practice management hours that will be accepted is six (6) hours of the thirty (30) hour requirement.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-119.

Rule 1045-2-.13, Reserved, is amended by deleting the catchline in its entirety and substituting instead the following new catchline, and is further amended by adding the following language as new paragraphs (1), (2), (3), and (4) so that as amended, the new catchline and the new paragraphs (1), (2), (3), and (4) shall read:

1045-2-.13 OPTOMETRIC PROFESSIONAL CORPORATIONS AND OPTOMETRIC PROFESSIONAL LIMITED LIABILITY COMPANIES.

- (1) Optometric Professional Corporations (OPC) – Except as provided in this rule Optometric Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
- (a) Filings – An OPC need not file its Charter or its Annual Statement of Qualifications with the Board.
- (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic OPC doing business in Tennessee:
1. Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8; and/or
 2. A general partnership in which all partners are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8; and/or
 3. An OPC in which all shareholders are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
 4. An Optometric Professional Limited Liability Company (OPLLC) in which all members are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
 5. A foreign OPC or OPLLC in which all shareholders/members are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
 6. A foreign or domestic physician general partnership, physician professional corporation or physician professional limited liability company doing business in Tennessee in which all shareholders/members are ophthalmologists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or composed of entities which are directly or indirectly owned by such licensed ophthalmologists.

(c) Officers and Directors of Optometric Professional Corporations –

1. All, except the following officers, must be persons who are eligible to form or own shares of stock in an OPC as limited by T.C.A. § 48-101-610 (d) (1) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in an OPC as limited by T.C.A. § 48-101-610 (d) (1) and subparagraph (1) (b) of this rule shall be directors of an OPC.

(d) Practice Limitations

1. Engaging in, or allowing another optometric incorporator, shareholder, officer, or director, while acting on behalf of the OPC, to engage in, optometric practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of Tennessee Code Annotated, Section 63-8-120 (a)(2).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an OPC.
 3. Nothing in these rules shall be construed as prohibiting an OPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporation Act so long as those purposes do not interfere with the exercise of independent optometric judgment by the optometric incorporators, directors, officers, shareholders, employees or contractors of the OPC who are practicing optometry as defined by Tennessee Code Annotated § 63-8-102.
 4. Nothing in these rules shall be construed as prohibiting an optometrist from owning shares of stock in any type of professional corporation other than an OPC so long as such ownership interests do not interfere with the exercise of independent optometric judgment by the optometrist while practicing optometry as defined by Tennessee Code Annotated § 63-8-102.
- (2) Optometric Professional Limited Liability Companies (OPLLC) - Except as provided in this rule Optometric Professional Limited Liability Companies shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 248.
- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
 - (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 only the following may be members of a foreign or domestic OPLLC doing business in Tennessee:
 1. Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8; and/or

2. A general partnership in which all partners are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8; and/or
 3. An OPC in which all shareholders are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
 4. An Optometric Professional Limited Liability Company (OPLLC) in which all members are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
 5. A foreign OPC or OPLLC in which all shareholders/members are optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
 6. A foreign or domestic physician general partnership, physician professional corporation or physician professional limited liability company doing business in Tennessee in which all shareholders/members are ophthalmologists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or composed of entities which are directly or indirectly owned by such licensed ophthalmologists.
- (c) Managers or Governors of an OPLLC
1. All, except the following managers, must be persons who are eligible to form or become members of an OPLLC as limited by T.C.A. § 48-248-401 (d) (1) and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
 2. Only persons who are eligible to form or become members of an OPLLC as limited by T.C.A. § 48-248-401 (d) (1) and subparagraph (2) (b) of this shall be allowed to serve on the Board of Governors of an OPLLC.
- (d) Practice Limitations
1. Engaging in, or allowing another optometric member, officer, manager, or governor, while acting on behalf of the M PLLC, to engage in, optometric practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the code of ethics and/or either Tennessee Code Annotated, Section 63-8-120 (a)(2).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an OPLLC.
 3. Nothing in these rules shall be construed as prohibiting an OPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporation Act so long as those pur-

poses do not interfere with the exercise of independent optometric judgment by the optometrist members, governors, officers, managers, employees or contractors of the OPLLC who are practicing optometry as defined by Tennessee Code Annotated § 63-8-102.

4. Nothing in these rules shall be construed as prohibiting an optometrist from being a member of any type of professional limited liability company other than an OPLLC so long as such membership interests do not interfere with the exercise of independent optometric judgment by the optometrist while practicing optometry as defined by Tennessee Code Annotated, Section 63-8-102.
 5. All OPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that an OPC or an OPLLC has violated or is violating any provision of Title 48 Chapters 101 and/or 248 shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the OPC and/or OPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the OPC and/or OPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the OPC and/or OPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the OPC and/or OPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the OPC and/or OPLLC is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that an OPC and/or OPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1)-(3) and/or 48-248-409 (1)-(3).
- (4) Violation of this rule by any optometrist individually or collectively while acting as an OPC or as an OPLLC may subject the optometrist(s) to disciplinary action pursuant to Tennessee Code Annotated, Sections 63-8-120 (a) (2).

Authority: T.C.A. §§4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-8-102, 63-8-112, and 63-8-120.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of May, 2003. (05-27)

BOARD OF OSTEOPATHIC EXAMINATION - 1050

There will be a hearing before the Tennessee Board of Osteopathic Examination to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 1st day of August, 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

AMENDMENT

Rule 1050-3-.06 Fees, 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) Application and Certification Fee
To be paid by all applicants at the
time an application is filed.

Limited Certification	\$ 50.00
Full Certification	\$ 50.00

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of May, 2003. (05-18)

**BOARD OF PHARMACY - 1140
CONTROLLED SUBSTANCE MONITORING ACT COMMITTEE**

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Tenn. Code Ann. §53-10-303(f). 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 37243 at 9:00AM on the 18th day of July, 2003.

Any individuals with disabilities who wish to participate in these proceedings (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 of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Commerce and Insurance's ADA Coordinator, Verna Norris, at Davy Crockett Tower, 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 and (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Kendall Lynch, Executive Director, Tennessee Board of Pharmacy, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243, telephone (615) 253-1300.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1140-11

CONTROLLED SUBSTANCE MONITORING DATABASE

NEW RULES

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1140-11-.01 Definitions
1140-11-.02 Access to Database

1140-11-.03 Alternative Identification of Patients
1140-11-.04 Submission of Information

1140-11-.01 DEFINITIONS.

The following definitions shall be applicable to this chapter:

- (a) “Board” means the Board of Pharmacy created by Tenn. Code Ann., Title 63, Part 10;
- (b) “Commissioner” means the Commissioner of Commerce and Insurance;
- (c) “Committee” means the controlled substance monitoring database advisory committee created by Tenn. Code Ann. § 53-10-303;
- (d) “Controlled substance dispensed identifier” means the National Drug Code Number of the controlled substance;
- (e) “Database” means the controlled substance database created by Tenn. Code Ann., Title 53, Part 10;
- (f) “Department” means the Department of Commerce and Insurance;
- (g) “Dispense” means to physically deliver a controlled substance covered by this chapter to any person, institution or entity with the intent that it be consumed away from the premises in which it is dispensed. “Dispense” does not include the act of writing a prescription by a practitioner to be filled at a pharmacy licensed by the Board;
- (h) “Dispenser” means any health care practitioner who has the authority to dispense prescriptions for controlled substances;
- (i) “Dispenser identifier” means the Drug Enforcement Administration Registration Number of the dispenser as defined in Tenn. Code Ann. §53-10-302(7);
- (j) “Patient” means a person, animal or owner of an animal who is receiving medical treatment from a prescriber;
- (k) “Patient identifier” means the patient’s full name; address, including zip code; date of birth; and social security number or an alternative identification number as defined by this rule;
- (l) “Person” means any individual, partnership, association, corporation and the state of Tennessee, its departments, agencies and employees, and the political subdivisions of Tennessee and their departments, agencies and employees;
- (m) “Prescriber” means any health care practitioner who has the authority to issue prescriptions for controlled substances;
- (n) “Prescriber identifier” means the Drug Enforcement Administration Registration Number of the prescriber as defined by this rule.

Authority: T.C.A. §§53-10-302, 53-10-303(f).

1140-11-.02 ACCESS TO DATABASE.

- (1) The following persons shall have access to the controlled substance database with regard to a patient:
 - (a) the prescriber who is currently issuing the patient a controlled substance or controlled substances or who anticipates issuing the patient a controlled substance or controlled substances;

- (b) the dispenser who is currently dispensing a controlled substance or controlled substances to the patient or who anticipates issuing the patient a controlled substance or controlled substances;
 - (c) a person who has the patient's written permission to have access to the patient's records in the database;
 - (d) the manager of any investigations or prosecution unit of a health-related board, committee or other governing body who has access to the database pursuant to Tenn. Code Ann. §53-10-308, may release the database information that they receive to the state of Tennessee health-related boards, health-related committees, the department, the department of health and representatives of health-related professional recovery programs; or
 - (e) a district attorney who obtains an order from circuit or criminal court ordering the release of the information contained in the database, in compliance with Tenn. Code Ann. §53-10-306.
- (2) The persons listed in paragraph (1) of this rule shall have access to the information contained in the database by submitting a request for information in writing or by electronic means to the Committee on a form developed by the Committee and in compliance with the procedures developed by the Committee. The Committee shall not disseminate any information from the database without the submission of this written request.

Authority: T.C.A. §§53-10-303(f), 53-10-304(b), 53-10-305(e), 53-10-306, 53-10-308.

1140-11-.03 ALTERNATIVE IDENTIFICATION OF PATIENTS.

- (1) If a patient does not have a social security number or refuses to provide his or her social security number to be used as a patient identifier, then the board shall use the patient's driver's license number as the patient identifier in the database.
- (2) If a patient does not have a social security number or a driver's license number, then the board shall use the number "000-00-0000" as the patient identifier in the database.
- (3) If a patient or a patient's agent refuses to provide his or her social security number or driver's license number to his or her prescriber or dispenser, then the board shall use the number "999-99-9999" as the patient identifier in the database.
- (4) If a patient's social security number is not available, then the board shall use the social security number or driver's license number of the person obtaining the controlled substance on behalf of the patient as the patient identifier in the database or the numbers "000-00-0000" or "999-99-9999", as applicable.
- (5) If a patient is a child who does not have a social security number, then the board shall use the parent's or guardian's social security number, driver's license number, number "000-00-0000" or number "999-99-9999" as the patient identifier in the database.
- (6) If a patient is an animal, then the board shall use the owner's social security, driver's license number, number "000-00-0000" or number "999-99-9999" as the patient identifier in the database.

Authority: T.C.A. §§53-10-303(f), 53-10-305(e)(2).

1140-11-.04 SUBMISSION OF INFORMATION.

- (1) The dispenser who is dispensing controlled substances within or from outside of the State of Tennessee and who is treating patients in the State of Tennessee with controlled substances shall submit the required information to the Committee pursuant to Tenn. Code Ann. §53-10-305(a).
- (2) The dispenser shall submit the data that is required by Tenn. Code Ann. §53-10-305 in the following forms:
 - (a) an electronic device compatible with the Committee's receiving device or the receiving device of the Committee's agent;
 - (b) double-sided, high density micro floppy disk;
 - (c) one-half inch (1/2), nine (9) track sixteen hundred (1,600) or six thousand two hundred and fifty (6,250) BPI magnetic tape; or
 - (d) other electronic or data format approved by the Committee.
- (3) The dispenser shall transmit the data that is required pursuant to Tenn. Code Ann. §53-10-305(a) in the Telecommunications Format for Controlled Substances established by the American Society for Automation in Pharmacy (ASAP).
- (4) If the dispenser does not have an automated recordkeeping system capable of producing an electronic report of the required data in the format established by the ASAP, then the dispenser may request a waiver from the electronic reporting requirement from the Committee.
- (5) If the Committee grants the dispenser a waiver from the electronic reporting requirement, then the dispenser shall comply with an alternative method of reporting the data as determined by the Committee, such as submitting the required data in writing on a form approved by the Committee.

Authority: T.C.A. §§53-10-303(f), 53-10-305(a), (b) and (d).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of May, 2003.
(05-31)

BOARD OF RESPIRATORY CARE - 1330

There will be a hearing before the Tennessee Board of Respiratory Care to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-27-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 31st day of July, 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, 1st Flr., Cordell Hull Bldng., 425 Fifth Ave. N., Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1330-1-.05, Qualifications and Procedures for Licensure, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e) shall read:

- (1) (e) An applicant shall submit with his application a “passport” style photograph taken within the preceding twelve (12) months.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-27-104, 63-27-105, and 63-27-116.

Rule 1330-1-.06, Fees, is amended by deleting subparagraphs (1) (a) and (1) (f) in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (1) (g), and is further amended by deleting paragraph (2) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (3) but not its subparagraphs, and is further amended by adding the following language as subparagraph (3) (g) and renumbering the remaining subparagraph as (3) (h), and is further amended by deleting paragraph (4) in its entirety, so that as amended, the new subparagraphs (1) (a), (1) (f), and (1) (g), the new paragraph (2), the new paragraph (3) but not its subparagraphs, and the new subparagraph (3) (g) shall read:

- (1) (a) Total Application fee – A fee to be paid by all applicants seeking initial licensure, including those seeking licensure by reciprocity. This fee includes the Application Fee, Licensure Fee and State Regulatory Fee. In cases where an applicant is denied licensure or the application file is closed due to abandonment, only the portion pertaining to Licensure Fee and the portion of the State Regulatory Fee that applies to Licensure Fee will be refundable.
- (1) (f) State regulatory fee – A fee to be paid by all individuals with all applications.

- (1) (g) Upgrade fee – A non-refundable fee to be paid by a respiratory assistant or a certified respiratory therapist when seeking to upgrade his/her authorization to practice respiratory care as provided in rule 1330-1-.21.
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Board of Respiratory Care.
- (3) Fee Schedule: Amount
- (3) (g) Upgrade Fee 20.00

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-27-104, 63-27-105, and 63-27-116.

Rule 1330-1-.21, Upgrading Classification Requirements, is amended by deleting subparagraphs (1) (a), (2) (a), and (3) (a) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a), (2) (a), and (3) (a) shall read:

- (1) (a) Complete and submit a notarized application, attach a “passport” style photograph taken within the preceding twelve (12) months, and pay the Upgrade and State Regulatory fees as provided in rule 1330-1-.06.
- (2) (a) Complete and submit a notarized application, attach a “passport” style photograph taken within the preceding twelve (12) months, and pay the Upgrade and State Regulatory fees as provided in rule 1330-1-.06.
- (3) (a) Complete and submit a notarized application, attach a “passport” style photograph taken within the preceding twelve (12) months, and pay the Upgrade and State Regulatory fees as provided in rule 1330-1-.06.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-27-104, 63-27-105, and 63-27-116.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of May, 2003.
(05-08)



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 May 1, 2003 and ending May 30, 2003.


RILEY C. DARNELL
Secretary of State

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