

TAAAR



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RILEY C. DARNELL
Secretary of State

Division of Publications
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PREFACE

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

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

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

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

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

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

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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THE TENNESSEE DEPARTMENT OF AGRICULTURE - 0080

WITHDRAWAL OF THE PROPOSED RULE TO AMEND CHAPTER 0080-6 REGARDING AERIAL PEST CONTROL OPERATORS

The Department of Agriculture, pursuant to Tenn. Code Ann. § 4-5-214, requests that the proposed rules to amend Chapter 0080-6 regarding the commercial application of aerial pesticides be withdrawn. This rule is scheduled to become effective on August 28, 2003.

Through the passage of Chapter 120 of the Public Acts of 2003, the General Assembly enacted the same provisions as an amendment to the Tennessee Code. Public Chapter 120 became effective on May 12, 2003 (Copy Attached).

This rule is scheduled to be heard by the Joint Government Operations Committee on Wednesday July 16, 2003. I have copied Legislative Attorney, Fred Standbrook, on this letter so that Committee can be informed about the withdrawal of the rule.

Ken Givens
Commissioner of Agriculture

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

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

I. PURPOSE

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

prevent an agency from making an independent decision about proceeding with a specific policy or action which the decisionmaker determines is authorized by law.

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

II. SCOPE

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

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

1. The exercise of the power of eminent domain;
2. The forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law;
3. Orders issued by a state agency or court of law that result from a violation of law and that are authorized by statute; and
4. The discontinuation of government programs.
Examples of agency actions that would be excluded under these guidelines include, but are not limited to, tax enforcement and collection activities pursuant to T.C.A. § 67-1-1401, et seq., or other authority.

III. GENERAL PRINCIPLES

A. Constitutional and Statutory Framework

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

The State has historically used its power of eminent domain under T.C.A. § 29-16-101, *et seq.* to acquire private property for a public purpose, such as a highway or recreation area, and in so doing has compensated property owners through a formal condemnation proceeding. The government, however, may also become liable for payment of just compensation to private property owners without the initiation of formal proceedings, when private property has either been physically occupied or invaded by the government on

a permanent or temporary basis, or so affected by governmental regulation as to have been effectively taken despite the fact the government has neither physically invaded, confiscated nor occupied the property. In contrast to the formal exercise of eminent domain, the private property owner can obtain compensation by filing an “inverse condemnation” suit.

B. Nature of a Taking

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

1. Physical Occupancy

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

2. Physical Invasion

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

3. Regulatory Takings

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

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

- a. Whether the policy or action will substantially advance a legitimate public purpose of the enabling statute, where the policy or action is in furtherance of obligations imposed or authorized by statute. If the regulation fails to substantially advance a legitimate state interest, goes beyond the government’s powers under common law nuisance doctrine, or no nexus exists between the asserted government purpose and the regulation, a taking may be found.
- b. Whether the regulation denies the landowner all economically viable use of his property or substantially interferes with his reasonable investment-backed expectations. In this regard, the timing of the regulatory enactment with respect to the landowner’s acquisition of title may be relevant, but not necessarily dispositive.

- c. If the regulation advances a legitimate public purpose, but is not reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Regulation of an individual's property that conditions approval of a permit/development on the dedication of some property to public use must not be disproportionate to the degree to which the individual's property use is contributing to the overall problem. The less direct, immediate and demonstrable the contribution of the property-related activity to the harm to be addressed, the greater the risk that a taking will be found.
- d. The degree to which a regulatory action closely resembles, or has the effect of, physical invasion or occupation of property. For example, an intended policy or action that totally abrogates an essential property interest, such as the right to exclude others by imposing an access easement, may, in certain circumstances, constitute a taking. See discussion in B. 2. above and C. 1. below.

C. Special Situations and Suggested Procedures

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

1. Permitting and Certification Programs

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

- a. Whether the government action will deprive the owner of essentially all economically viable or productive use of his property (see discussion below in C. 2. regarding economic impact of regulation); and
- b. The degree to which the state imposed restriction interferes with the owner's reasonable investment-backed expectations; and
- c. Whether the condition imposed by the government will result in a permanent physical occupation or invasion of the property, such as an access easement; and
- d. Whether a condition that requires a dedication of property to public use is reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Where public health and safety is the asserted regulatory purpose, then the health and safety risk posed by the property use must be identified with as much specificity as possible and should be real and substantial, and not merely speculative.

2. Assessing Economic Impact of the Regulation as Applied

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

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

3. The "Parcel as a Whole" Analysis

In determining the economic impact of a proposed or intended government action, an agency should consider the impact on the "parcel as a whole," and not merely the part of the parcel that is subject to regulation. The parcel as a whole is not limited by its geographic dimensions, but also has a temporal aspect defined by the term of years of the owner's interest in the land. Generally, if an owner has been denied economic use of a segment of a parcel, but retains viable economic use of other segments of the same parcel, a taking may not result.

Paul G. Summers
Attorney General & Reporter

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

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 8.00%.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST**

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of September 2003 is 9.30 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 5.30 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.

ANNOUNCEMENTS

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SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-01	July 1, 2003	1240 Human Services Child Support	Public Necessity Rules	Amendments	<i>Chapter 1240-2-4</i> 1240-2-4-.03 Guidelines for Calculating Child Support Award	Barbara Broersma Citizens Plaza Bldg 15th Fl Nashville TN 37248-0006 (615) 313-6023	July 1, 2003 through Dec 13, 2003
07-02	July 1, 2003	0400 Environment and Conservation Division of Solid Waste Management	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-7</i> <i>Solid Waste Processing and Disposal</i> 1200-1-7-.01 Solid Waste Management System: General Permitting of Solid Waste Storage, Processing, and Disposal Facilities 1200-1-7-.02 Specific Requirements For Class I, II, III, And IV Disposal Facilities 1200-1-7-.04 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste	Glenn Birdwell Solid Waste Management L & C Twr, 5th Fl 401 Church St Nashville, TN 37243 (615) 253-6689	Sept 14, 2003
07-03	July 1, 2003	1240 Human Services Family Assistance Division	Public Necessity Rules	Amendments	<i>Chapter 1240-1-50</i> <i>Standard of Need/Income</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	July 1, 2003 through Dec 13, 2003
07-04	July 1, 2003	1240 Human Services Adult and Family Services	Public Necessity Rules	Amendments	<i>Chapter 1240-4-1</i> <i>Standards for Group Child Care Homes</i> 1240-4-1-.03 Staff 1240-4-1-.07 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-6023	July 1, 2003 through Dec 13, 2003
07-05	July 1, 2003	1240 Human Services Adult and Family Services	Public Necessity Rules	Amendments	<i>Chapter 1240-4-3</i> <i>Licensure Rules for Child Care Centers Serving Pre-School Children</i> 1240-4-3-.07 Staff Qualifications 1240-4-3-.10 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-6023	July 1, 2003 through Dec 13, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-06	July 1, 2003	1240 Human Services Adult and Family Services	Public Necessity Rules	Amendments	<i>Chapter 1240-4-4 Standards for Family Child Care Homes</i> 1240-4-4-.03 Staff Transportation 1240-4-4-.07	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-6023	July 1, 2003 through Dec 13, 2003
07-07	July 1, 2003	1240 Human Services Adult and Family Services	Public Necessity Rules	Amendments	<i>Chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children</i> 1240-4-6-.07 Staff Qualifications 1240-4-6-.10 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-6023	July 1, 2003 through Dec 13, 2003
07-08	July 1, 2003	0800 Labor and Workforce Development Boiler and Elevator Inspection Elevator Safety Board	Proposed Rules	Amendments	<i>Chapter 0800-3-4 Elevators, Dumbwaiters, Escalators, and Other Lifts</i> 0800-3-4-.06 Qualifications and Licensing of Inspectors <i>Chapter 0800-3-10 Fees</i> 0800-3-10-.01	James G. Davis Labor and Workforce Development TN Twr 26th Fl 312 8th Ave N Nashville, TN 37243-0662 (615) 741-0851	Nov 28, 2003
07-10	July 3, 2003	1260 Real Estate Commission	Rulemaking Hearing Rules	Amendment New Rule Amendments	<i>Chapter 1260-2 Rules of Conduct</i> 1260-2-.03 Offices 1260-2-.09 Deposits and Earnest Money 1260-2-.11 Personal Interest 1260-2-.12 Advertising 1260-2-.32 Civil Penalties 1260-2-.36 Duties of Principal Brokers 1260-2-.37 Records Retention 1260-2-.38 Limitations of Liability 1260-2-.39 Comparative Market Analysis and Broker Opinions 1260-2-40 Licensee Pocket Cards 1260-2-41 Unlicensed Employees <i>Chapter 1260-5 Educational Requirements</i> 1260-5-.01 Purpose 1260-5-.03 Requirements for	Danica S. Irvine Real Estate Commission 312 8th Ave N 25th Fl T Twr Nashville TN 37243-0569 741-3072	Sept 16, 2003

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SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-10, cont.					<p>Courses Records Correspondence Courses Affiliate Brokers Repetition of Course Content Course Approval Periods</p> <p>Chapter 1260-6 Time-Share Programs 1260-6-.15 Conduct</p> <p>Chapter 1260-7 Vacation Lodging Services 1260-7-.01 Licensing 1260-7-.02 Escrow/Trust Accounts</p> <p>1260-7-.03 Branch Offices 1260-7-.04 Designated Agents 1260-7-.05 Licensee Owned Units</p>		
07-11	July 11, 2003	1540 Higher Education Commission	Public Necessity Rules	New Rules	<p>Chapter 1540-1-9 Immunizations for Newly Matriculating Students 1540-1-9-.01 General Provision</p>	Will Burns Higher Education Commission Suite 1900 Pkwy Twrs 404 J Robertson Pkwy, Nashville TN 37243 615-741-7571	July 11, 2003 through Dec 23, 2003
07-12	July 14, 2003	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	New Chapter	Chapter 1200-13-15 TennCare Administrative Hearings and Officials	George Woods Bureau of TennCare 729 Church Street Nashville, TN 37247-6501 (615) 741-0145	July 14, 2003 through Dec 26, 2003
07-13	July 15, 2003	0780 Commerce and Insurance Division of Fire Prevention	Rulemaking Hearing Rules	Amendments Repeals	<p>Chapter 0780-2-1 Electrical Installations 0780-2-1-.02 Adoption by Reference Inspections 0780-2-1-.04 Permits 0780-2-1-.05 Special Occupancies 0780-2-1-.07 Dwelling Units 0780-2-1-.11 Used Manufactured Homes</p> <p>0780-2-1-.16 Examinations</p>	Christy A. Allen OGC 500 James Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243-0569 (615) 741-3072	Sept 28, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-13, cont.					0780-2-1-.19 Electrical Installer Registration Requirements		
07-15	July 16, 2003	0450 Professional Counselors Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	Chapter 0450-1 General Rules Governing Professional Counselors 0450-1-05 Procedures for Licensure 0450-1-06 Fees 0450-1-07 Application Review Approval Denial Interviews 0450-1-.12 Continuing Education Chapter 0450-2 General Rules Governing Marital and Family Therapists 0450-2-05 Procedures for Licensure 0450-2-06 Fees 0450-2-07 Application Review Approval Denial Interviews 0450-2-.12 Continuing Education Chapter 0450-3 General Rules Governing Clinical Pastoral Therapists 0450-3-08 Examination 0450-3-.12 Continuing Education	Harry Weddle Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Sept 29, 2003
07-17	July 22, 2003	0400 Environment and Conservation Air Pollution	Rulemaking Hearing Rules	Amendments	Chapter 1200-3-9 Construction and Operating Permits 1200-3-9-.03 General Provisions	Mr. John Patton Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville TN 37243-1531 (615)532-0604	Oct 5, 2003
07-18	July 22, 2003	1365 Social Worker Certification and Licensure	Rulemaking Hearing Rules	Amendments	Chapter 1365-1 General Rules and Regulations 1365-1-05 Procedures for Certification and Licensure 1365-1-.10 Supervision	Richard F. Russell Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Oct 5, 2003
07-19	July 22, 2003	1370 Communications Disorders and	Rulemaking Hearing Rules	Amendments	Chapter 1370-1 Rules for Speech Pathology and Audiology	Ernest Sykes, Jr Health OGC 26th Fl TN Twr	Oct 10, 2003

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SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-19, cont.		Sciences			1370-1-09 Renewal of License 1370-1-12 Continuing Education 1370-1-15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Subpoenas	312 8th Ave N Nashville TN 37247-0120 615-741-1611	
07-20	July 22, 2003	0460 Dentistry	Rulemaking Hearing Rules	Amendments	Chapter 0460-1 General Rules 0460-1-05 Continuing Education and C.P.R	Nick Aemisegger Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Oct 10, 2003
07-22	July 24, 2003	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	Amendments	1200-13-1 Bureau of TennCare 1200-13-1-06 Provider Reimbursement 1200-13-1-10 Criteria for Medicaid Reimbursement of Care in Nursing Facilities	George Woods Bureau of TennCare 729 church St Nashville TN 37247-6501 615-741-0145	Oct 7, 2003
07-23	July 25, 2003	1660 TWRA	Rulemaking Hearing Rules	Amendment	Chapter 1660-1-11 Rules and Regulations Governing Shooting 1660-1-11.02 Operation of Private Wildlife Preserve	Sheryl Holtam Staff Attorney TWRA P.O. Box 40747 Nashville, TN 37302	Oct 8, 2003
07-24	July 28, 2003	1730 Veterinary Medical Examiners	Rulemaking Hearing Rules	Amendments	Chapter 1730-1 General Rules Governing Veterinarians 1730-1-12 Continuing Education 1730-1-13 Unprofessional Conduct Chapter 1730-4 General Rules Governing Certified Animal Control Agencies 1730-4-09 Recordkeeping 1730-4-11 Unprofessional Conduct 1730-4-13 Dispensing, or Otherwise Distributing Pharmaceuticals Chapter 1730-5 General Rules Governing Certified Animal Euthanasia Technicians 1730-5-01 Definitions	Glen Watson Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Oct 11, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-24, cont.					1730-5-.02 Necessity of Certification 1730-5-.11 Unprofessional Conduct 1730-1-.23 Euthanasia in C.A.C.A.s and Facilities Governed by the Non-Livestock Animal Humane Death Act 1730-5-.14 Dispensing, Or Otherwise Distributing Pharmaceuticals		
07-27	July 30, 2003	0450 Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	<i>Chapter 0450-1 General Rules Governing Professional Counselors</i> 0450-1-.12 Continuing Education 0450-1-.13 Professional Ethics <i>Chapter 0450-2 General Rules Governing Marital and Family Therapists</i> 0450-2-.12 Continuing Education 0450-2-.13 Professional Ethics <i>Chapter 0450-3 General Rules Governing Clinical Pastoral Therapists</i> 0450-3-.12 Continuing Education	Harry L. Weddle, III Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Oct 13, 2003
07-32	July 31, 2003	0400 Environment and Conservation Water Pollution Control	Emergency Rules	Amendments	<i>Chapter 1200-4-3 General Water Quality Criteria</i> 1200-4-3-.03	Patrick Parker 401 Church St 20th Fl L&C Twr Nashville TN 37243 615-532-0131	July 31, through Jan 12, 2004
07-36	July 31, 2003	1200 Environment and Conservation Division of Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-17 Dyrcleaner Environmental Response Program</i> 1200-1-17-.02 Definitions 1200-1-17-.03 Registration Fees And Surcharges, Certificate Issuance 1200-1-17-.04 Best Management Practices 1200-1-17-.05 Program Qualifications And	Steve Goins Superfund Environment & Conservation 4th Fl L&C Annex 401 Church St Nashville TN 37243-1538 (615) 532-8599	Oct 14, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-36, cont.					<p>Procedures For The Tennessee Dycleaner Environmental Response Program Withdrawing An Applicant's Grant Of Approval Administrative Guideline For The Tennessee Dycleaner Environmental Response Fund Contractors</p> <p>1200-1-17-.06</p> <p>1200-1-17-.08</p> <p>1200-1-17-.09</p>		
07-37	July 17, 2003	0080 Agriculture	Withdrawal		0080-6 Original amendment effective Aug 28, 2003		

HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Applications will be heard at the October 22, 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 August 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
Housecall Home Healthcare 315 Hickerson Drive Murfreesboro (Rutherford Co.), TN 37129 Kathy Bingham – (865)—292-6000 CN0307-044	The relocation of the home health care agency's parent office from 303 Deery Street, Shelbyville (Bedford Co.), Tennessee to 315 Hickerson Drive, Murfreesboro (Rutherford Co.), TN. This relocation will not affect the current service area or patients being served by this agency. \$ 4,775.00
Eye Care Surgery Center of Memphis, LLC 5350 Poplar Avenue, Suite 900 Memphis (Shelby Co.), TN 38119 Jay Coggin – (901)—522-9000 CN0307-045	The establishment of an ambulatory surgery treatment center (ASTC) limited to ophthalmology and the initiation of outpatient surgery services. \$ 910,426.00
Maury Regional Surgery Center, LLC 1220 Trotwood Avenue Columbia (Maury Col), TN 38401 Bob Lonis – (931)—540-4163 CN0307-046	The conversion of Maury Regional Hospital's Outpatient Surgery Center to a freestanding ambulatory surgery treatment center (ASTC) with two operating rooms. The facility will be located in approximately 15,000 square feet of existing space on the third floor of a new three-story outpatient building located on the hospital campus. Upon approval, the ASTC will be housed in an

NAME AND ADDRESS	DESCRIPTION
	<p>existing area designed for outpatient surgery as included in the project scope of Certificate of Need #CN9907-047 which is currently under construction pending completion on or about November 2003. No additional new construction or major renovation is required, no major medical equipment will be purchased and no health services will be initiated or discontinued.</p> <p>\$ 3,309,160.00</p>
<p>McNairy Regional Hospital 705 East Poplar Avenue Selmer (McNair Co.), TN 38375 Jerry W. Taylor – (615)—726-1200 CN0307-048</p>	<p>The initiation of mobile magnetic resonance imaging “MRI” service for two days per week, and the conversion of ten (10) general hospital beds to swing beds and the initiation of swing bed services.</p> <p>\$ 468,000.00</p>
<p>Lebanon Diagnostic Imaging Center 1616 West Main Street Lebanon (Wilson Co.), TN 37087-2595 Larry Keller – (615)—443-2500 CN0307-049</p>	<p>The establishment of an outpatient diagnostic center, the acquisition of a magnetic resonance imaging “MRI” scanner, computed tomography “CT” scanner and other diagnostic equipment, and the initiation of outpatient diagnostic services in approximately 12,000 square feet of space.</p> <p>\$ 9,565,467.00</p>
<p>Smyrna Physicians Pavilion Surgery Center 411 and 541 Chaney Road Smyrna (Rutherford Co.), TN 37167 Noel Falls – (251)—929-1003 CN0307-050</p>	<p>The relocation and replacement of a multi-specialty ambulatory surgical treatment center (ASTC) with four (4) sterile operating rooms and one treatment room. The existing ASTC is located at 360 Wallace Road in Nashville (Davidson County), Tennessee. The location of the proposed replacement ASTC is 411 and 541 Chaney Road in Smyrna (Rutherford County), Tennessee.</p> <p>\$ 8,801,368.00</p>
<p>The Jackson Clinic 616 West Forest Avenue Jackson (Madison Co.), TN 38301 John Wellborn – (615)—665-2022 CN0307-051</p>	<p>The establishment of a freestanding cardiac catheterization laboratory and the initiation of outpatient cardiac catheterization services in 3,600 gross square feet of existing space.</p> <p>\$ 2,703,162.00</p>
<p>Dyersburg Regional Medical Center 400 Tickle Street Dyersburg (Dyer Co.), TN 38024 Jerry W. Taylor – (615)—726-1200 CN0307-052</p>	<p>The conversion of ten (10) general hospital beds to swing beds and the initiation of swing bed services.</p> <p>\$ 18,500.00</p>

NAME AND ADDRESS	DESCRIPTION
Scott County Hospital Highway 27 Oneida (Scott Co.), TN 37841 Jerry W. Taylor – (615)—726-1200 CN0307-053	The initiation of mobile lithotripsy services for two days per week. \$615,000.00
Hartsville Convalescent Center, Inc. 649 McMurry Blvd. (Current – No # assigned) Hartsville (Trousdale Co.), TN 37074 CN0307-054	The replacement of a nursing home and the addition of twenty-five (25) Medicare skilled beds. The current facility is located at 649 McMurry Blvd., Hartsville (Trousdale County), Tennessee and the proposed replacement facility will be built approximately 1,000 feet west of the existing facility. If approved, the replacement facility will contain one hundred twenty (120) nursing home beds. \$ 5,997,463.00

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 1200 - Department of Health - Bureau of Health Services Administration Communicable and Environmental Disease Services - Emergency rule covering reporting of diseases to public health authorities, chapter 1200-14-1 Communicable Diseases, 7 T.A.R. (July 15,2003) - Filed June 10, 2003; effective through November 22, 2003. (06-11)

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

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A §4-5-208, the Water Quality Control Board is promulgating emergency rules covering nutrient criteria. In *City of Cookeville v. Tennessee Water Quality Control, et al.*, the court recently held that organic enrichment resulting from excessive nutrients cannot be addressed in a NPDES permit issued by the Tennessee Department of Environment and Conservation in the absence of a water quality standards rule promulgated by the Water Quality Control Board under the Uniform Administrative Procedures Act. A notice of proposed rulemaking for revised water quality standards (WQS) rules was filed with the Secretary of State on January 31, 2001. Those WQS rules include a narrative criterion for nutrients and there have been public hearings and public comments on those WQS rules. But under T.C.A. § 4-5-207, these rules, once adopted by the Board, will not be effective until 75 days after they have been filed with the Secretary of State.

As a result of the ruling in *City of Cookeville*, we have made the finding that there is an emergency creating a danger to the public health, safety, and welfare in that there will not be an adequate regulatory basis for the control of nutrients in the waters of the state, absent an emergency rule, until after such permanent rules, which are already in process, are formally promulgated by the Water Quality Control Board. The lack of such basis would be injurious to the waters of the state held in the trust for the public, and the public welfare.

By making such finding, the Board does not waive any legal challenges as to the correctness of the recent court ruling regarding the *City of Cookeville* case, which the Department plans to appeal during the time this rule is effective.

For copies of the entire text of the proposed amendments contact: Patrick N. Parker, 401 Church Street, 20th Floor, L&C Tower, Nashville, TN 37243, (615) 532-0131.

Chairperson
Tennessee Water Quality Control Board

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
WATER QUALITY CONTROL BOARD
DIVISION OF WATER POLLUTION CONTROL**

**CHAPTER 1200-4-3
GENERAL WATER QUALITY CRITERIA**

AMENDMENTS

Rule 1200-4-3-.03 (3) is amended by adding the following language:

- (k) Nutrients – The waters shall not contain nutrients in concentrations that stimulate aquatic plant and/or algae growth to the extent that aquatic habitat is substantially reduced and /or the biological integrity fails to meet regional goals. Additionally, the quality of downstream waters shall not be detrimentally affected.

Interpretation of this provision may be made using the document Development of Regionally-based Interpretations of Tennessee's Narrative Nutrient Criterion and/or other scientifically defensible methods.

Authority: *T.C.A. §§4-5-201, et seq., and 69-3-105.*

The emergency rules set out herein were properly filed in the Department of State on the 31st day of July, 2003 and will be from the date of filing for a period of 165 days. These emergency rules will remain in effect through 12th day of January, 2004. (07-32)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF BOILER AND ELEVATOR INSPECTION ELEVATOR SAFETY BOARD

CHAPTER 0800-3-4 ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER LIFTS

CHAPTER 0800-3-10 FEES

Presented herein are proposed rules and amendments of the Department of Labor and Workforce Development, Division of Boiler and Elevator Inspection, Elevator Safety Board, 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 rules and amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules and amendments are published. Such petition to be effective must be filed in the Legal Section office of the Department of Labor, Tennessee Tower - 26th Floor, 312 Eighth Avenue North, Nashville, Tennessee 37243-0293, and in the Administrative Procedures Division of the Department of State, James K. Polk State Office Building, Suite 1700, 505 Deaderick Street, Nashville, Tennessee 37219-0310, 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 Mr. Gary Cookston, Director, Boiler and Elevator Division, Tennessee Department of Labor and Workforce Development, Andrew Johnson Tower - 3rd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0663, telephone: (615) 741-2123.

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

AMENDMENTS

CHAPTER 0800-3-4 ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER LIFTS

Rule 0800-3-4.-06 Qualifications and Licensing of Inspectors is amended deleting the rule in its entirety and substituting the following language, so that as amended the rule shall read:

0800-3-4.-06 QUALIFICATIONS AND LICENSING OF INSPECTORS.

- (1) All required inspections made under the requirements of this Chapter shall be made by, or in the presence of inspectors qualified and licensed as prescribed in T.C.A. §68-121-110.
- (2) Inspectors that are qualified and licensed as prescribed in T.C.A. §68-121-110 shall obtain certification in accordance with Rule 1000.1 of the Elevator Safety Code as soon as possible, but no later than eighteen (18) months from the date of qualification and licensing under T.C.A. §68-121-110.

Authority: T.C.A §§ 4-5-202(a)(3), 68-121-110.

AMENDMENTS

**CHAPTER 0800-3-10
FEES**

Paragraph (4) of Rule 0800-3-10-.01 is amended by deleting the paragraph in its entirety and substituting the following language so that as amended the paragraph shall read:

- (4) For periodic inspections of passenger elevators, freight elevators, escalators, chair lifts, aerial passenger tramways, lifts, surface lifts, tows and dumbwaiters required by T.C.A. §68-121-106, as follows:
 - (a) All passenger and freight elevators with three (3) or more landings \$50.00
Plus five dollars (\$5.00) for any additional landings above the third landing up to a maximum of fifty dollars (\$50.00) per elevator.
 - (b) Escalators \$50.00
 - (c) All inclined and vertical chair lifts \$50.00
 - (d) Aerial passenger tramways, lifts, surface lifts, and tows \$100.00
 - (e) All dumbwaiters \$50.00

The fees prescribed by these regulations supersede all fees prescribed by previous regulations for construction permits, acceptance inspection, operating permits, initial inspections, periodic inspection, and requested inspection for elevators, escalators, aerial passenger tramways, lifts, surface lifts, tows, and dumbwaiters.

Authority: T.C.A. §§ 4-5-202(a)(3), and 68-121-103(a)(5).

The proposed rules set out herein were properly filed in the Department of State on the 10th day of July, 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 28th day of November, 2003. (07-08)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT (SEE T.A.R. CITED)

1500 - The Tennessee Human Rights Commission - Public necessity rules regarding discrimination complaints, chapter 1500-1 Rules for Acting on Complaints of Discrimination, 7 T.A.R. (July 15, 2003) - Filed June 18, 2003; effective November 30, 2003. (06-20)

THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0640 BUREAU OF TENNCARE

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

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

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

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

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

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

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

Manny Martins
Deputy Commissioner
Department of Finance and Administration

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
AMENDMENT**

Rules of the Tennessee Department of Finance and Administration are amended by adopting a new chapter 1200-13-15 Rules of the TennCare Administrative Hearings and Officials which shall read as follows:

**CHAPTER 1200-13-15
TENNCARE ADMINISTRATIVE HEARINGS AND OFFICIALS**

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1200-13-15-.01	Definitions	1200-13-15-.14	Order of Proceedings
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1200-13-15-.04	Time and Continuances	1200-13-15-.17	Default and Uncontested Proceedings
1200-13-15-.05	Commencement of a Contested Case Proceeding	1200-13-15-.18	Record of Contested Case Proceedings
1200-13-15-.06	Service of Notice of Hearing	1200-13-15-.19	Hearing Decision Evidence
1200-13-15-.07	Telephonic, Televised and alternate electronic methods for conducting hearings and Pre-Hearing Conferences	1200-13-15-.20	Notice of Right to Appeal the Initial Order
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1200-13-15-.11	Subpoena	1200-13-15-.24	Effect on the Final Order
1200-13-15-.12	Evidence in Hearings	1200-13-15-.25	Reconsideration Proceedings
1200-13-15-.13	Examination of Case File	1200-13-15-.26	Clerical Mistakes
		1200-13-15-.27	Code of Judicial Conduct, Disqualification and Separation of Functions

1200-13-15-.01 DEFINITIONS.

- (1) Administrative Judge. An impartial employee or official of the Department of State Administrative Procedures Division who is licensed to practice law and authorized by law to conduct contested case proceedings pursuant to T.C.A. § 4-5-301.
- (2) Agency. The Bureau of TennCare.
- (3) Administrative Procedures Division (APD). The Department of State Administrative Procedures Division.
- (4) Appeal. The process of obtaining a contested case proceeding as a result of an Agency adverse action regarding matters affecting or relating to eligibility for TennCare Standard, or the process of obtaining review of an initial order by the Commissioner's Designee or judicial review of a final order.
- (5) Applicant. An individual who submits an application for TennCare Standard health coverage or an individual on whose behalf an application for TennCare Standard health coverage is submitted.

- (6) **Burden of Proof.** The “burden of proof” refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue. Generally, the party with the burden of proof presents his or her proof first at the hearing. The hearing officer or administrative judge makes all decisions regarding which party has the burden of proof on any issue, and determines the order of proceedings, taking into account the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand.
- (7) **Bureau of TennCare (Bureau).** The administrative unit of TennCare which is responsible for the administration of TennCare, the program administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (8) **Commissioner.** The chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located.
- (9) **Commissioner’s Designee.** A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for stay or reconsideration of final orders.
- (10) **Contested Case Proceeding.** An administrative hearing proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.
- (11) **Department.** The Tennessee Department of Finance and Administration.
- (12) **Findings of Fact.** The factual findings following the administrative hearing, enumerated in the initial and/or final order, which include a concise and explicit statement of the underlying facts of record to support the findings.
- (13) **Final Order.** The initial order becomes a final order without further notice if not timely appealed, or if the initial order is appealed pursuant to T.C.A. § 4-5-315, the Commissioner or Commissioner’s Designee may render a final order. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included.
- (14) **Hearing.** A contested case proceeding.
- (15) **Hearing Officer.** An impartial official of the Department of Finance and Administration or the Department of State Administrative Procedures Division who is designated by the Commissioner or his/her designated representative to conduct contested case administrative hearing proceedings. The person so designated shall have no direct involvement in the action under consideration prior to the filing of the appeal.
- (16) **Initial Order.** The decision of the hearing officer or administrative judge following a contested case administrative hearing proceeding. The initial order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It shall include a statement of any circumstances under which the initial order may, without further notice, become a final order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included.

- (17) Notice of Hearing. The pleading filed with the TennCare Administrative Hearing Unit or the Administrative Procedures Division by the agency upon receipt of an appeal. It shall contain a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307 (b).
- (18) Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (19) Person. Any individual.
- (20) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as, a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (21) TennCare Administrative Hearing Unit (TAHU). The office established within the Department of Finance and Administration to provide Hearing Officers for the purpose of conducting Administrative Hearings of appeals of agency actions regarding matters affecting eligibility under TennCare Standard.
- (22) TennCare Standard. TennCare Standard is that part of the TennCare Program which provides health coverage for Tennessee residents who are not eligible for Medicaid under Tennessee's Title XIX State Plan for Medical Assistance and is further defined in the Rules and Regulations of Tennessee Department of Finance And Administration Bureau of TennCare at Chapter 1200-13-14.
- (23) TRCP. The Tennessee Rules of Civil Procedure.
- (24) Uniform Administrative Procedures Act (UAPA). The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.

1200-13-15-.02 SCOPE AND AUTHORITY OF AN ADMINISTRATIVE HEARING OFFICIAL.

- (1) Tennessee's Medical Assistance Act and the Federal statutes of the Social Security Act (which includes Medical Assistance/Medicaid) and constitutional provisions require that there be provisions for appeals and fair hearings for applicants and recipients of assistance and services provided by the Department. The Tennessee Department of Finance and Administration and the Tennessee Department of Human Services have been designated responsibility for fulfillment of hearing provisions in the medical assistance programs. Medical assistance eligibility hearings shall meet the due process standards set forth in *Goldberg v. Kelly*, 397 US 245 (1970) and the standards set forth in the Federal Regulations.

Subject to any superseding federal or state law, these rules shall govern contested case proceedings conducted for the purpose of determining non-Medicaid TennCare Standard eligibility and related issues, and will be relied upon by hearing officers, administrative judges, and commissioner's designees conducting such proceedings. More specifically, these rules shall govern contested case proceedings determining TennCare Standard eligibility subsequent to a determination by TDHS that a person is not eligible for Medicaid. TennCare Medicaid eligibility appeals shall be conducted by the Department of Human Services pursuant to Chapter 1240-5 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

- (2) In any procedural situation that arises that is not specifically addressed by these rules, reference may be made to the following authorities in the order listed for guidance as to the proper procedure to follow: the Tennessee Uniform Administrative Procedures Act and the rules promulgated thereunder, and the Tennessee Rules of Civil Procedure.
- (3) The Commissioner has placed responsibility for conducting contested case proceedings in the TennCare Administrative Hearing Unit, and the Department of State Administrative Procedures Division. The hearing officer, or administrative judge is vested with full authority to conduct the contested case process in accordance with these rules, as applicable.
- (4) The hearing officer or administrative judge shall have the authority to do the following:
 - (a) Schedule and conduct the hearing;
 - (b) Administer oaths;
 - (c) Issue subpoenas;
 - (d) Rule upon offers of proof;
 - (e) Regulate the course of the hearing;
 - (f) Write an initial order stating his/her decision; and
 - (g) Rule on petitions for reconsideration or stays of the initial order issued by the same hearing officer or administrative judge.
- (5) The Commissioner has placed responsibility in the TennCare Commissioner's Designee Unit for conducting appeal reviews of Initial Orders and for ruling on petitions for reconsideration or stays of final orders issued by the commissioner's designee. The commissioner's designee is vested with full authority to conduct such proceedings in accordance with T.C.A. §§4-5-315, 4-5-316, 4-5-317, and these rules.

1200-13-15-.03 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings and any other materials required to be filed by a time certain as the result of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the TAHU or the APD, as designated, within the required time period.
- (2) Upon the involvement of either the TAHU or the APD in any contested case, all pleadings and other materials required to be filed or submitted prior to the contested case hearing shall be filed with the designated office, where they will be stamped with the date and hour of their receipt.
- (3) Petitions for review of an initial order and for reconsideration or stay of a final order may be filed with the agency or either the TAHU or the APD, as designated in the order.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1200-13-15-.10.

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

1200-13-15-.04 TIME AND CONTINUANCES.

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. The Notice of Hearing will provide notice of this provision or inform the applicants/enrollees of the specific calendar dates by which certain actions must be taken.
- (2) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the hearing officer or administrative judge or commissioner's designee as soon as practicable.
- (3) Any case may be continued by mutual consent of the parties when approved by the hearing officer or administrative judge or commissioner's designee.
- (4) If an enrollee or applicant requests a continuance, any mandatory deadlines for conducting hearings and issuance of initial orders by a hearing officer or an administrative judge shall be extended by like period of time. Calculation of the 90-day timeframe may be adjusted only to the extent that any delays are attributable to the beneficiary. The beneficiary should only be charged with the amount of delay occasioned by the beneficiary's acts or omissions, and any other delays should be deemed to be the responsibility of TennCare. The TennCare Bureau is responsible for keeping track of the timeframes.

1200-13-15-.05 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

- (1) Commencement of Action. A contested case proceeding may be commenced by original agency action, by appeal from an agency action, by request for hearing, by an affected person, or by any other lawful procedure.
- (2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the agency, which notice shall comply with T.C.A. § 4-5-307(b).
- (3) Supplemented Notice. In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later writings.
- (4) Filing of Documents. When a contested case is commenced, the agency shall provide the TAHU or the APD with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency concerning that particular case. Legible copies may be filed in lieu of originals.
- (5) Answer. The party may respond to the matters set out in the notice or other original pleading by filing a written answer with the agency in which the party may:

- (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Agency may proceed.
 - (b) Object on the basis of lack of jurisdiction over the subject matter.
 - (c) Object on the basis of lack of jurisdiction over the person.
 - (d) Object on the basis of insufficiency of the notice.
 - (e) Object on the basis of insufficiency of service of the notice.
 - (f) Object on the basis of failure to join an indispensable party.
 - (g) Generally deny all the allegations contained in the notice or state that he is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges.
 - (h) Admit in part or deny in part allegations in the notice and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues.
 - (i) Assert any available defense.
- (6) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing officer or administrative judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory or regulatory basis for denial or termination of enrollment without original service and running of times applicable to service of the original notice. The hearing officer or administrative judge shall not grant a continuance to amend the notice or original pleading if such would prejudice an applicant's or an enrollee's right to a hearing and initial order within any mandatory timeframes.
- (7) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing officer or administrative judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing officer or administrative judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments. However, when the applicant/enrollee is not represented by counsel, the burden cannot be put on such individuals to object to the State's trying of cases with proof and legal authorities not set out in the pleadings.

1200-13-15-.06 SERVICE OF NOTICE OF HEARING.

In any case in which an applicant or an enrollee has requested a hearing from the agency, a copy of the notice of hearing shall be delivered to the party by certified or registered mail, postage prepaid or personal service, at the address required to be kept current with the agency by T.C.A. §§ 71-5-106(l) and 110(c)(1) and the address provided with the request for hearing, if different from the address on file with the agency. However, TennCare must use the best address known to it, whether provided directly by the applicant/enrollee, or indirectly.

- (1) In the event of a motion for default where there is no indication of actual service on a party, the following circumstances will be taken into account in determining whether to grant the default:
 - (a) Whether and to what extent actual service is practicable in any given case;
 - (b) What attempts were made to get in contact with the party by telephone or otherwise; and
 - (c) Whether the agency has actual knowledge or reason to know that the party may be located elsewhere than the address to which the notice was mailed.

1200-13-15-.07 TELEPHONIC, TELEVISED AND ALTERNATE ELECTRONIC METHODS FOR CONDUCTING HEARINGS AND PREHEARING CONFERENCES.

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

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

1200-13-15-.08 REPRESENTATION.

- (1) The agency shall notify all parties in a contested case proceeding of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.

- (2) Any party to a contested case proceeding may be advised and represented, at the party's own expense, by a licensed attorney.
- (3) Any party to a contested case proceeding may represent him/herself or may participate through a duly authorized representative.
- (4) A party to a contested case proceeding may be represented by a non-attorney, as specifically permitted by federal or state law.

1200-13-15-.09 PRE-HEARING MOTIONS.

- (1) Scope — This rule applies to all motions made prior to a hearing on the merits of a contested case.
- (2) Motions — Parties to a contested case are encouraged to resolve matters on an informal basis; however, if efforts at informal resolutions fail, any party may request relief in the form of a motion by serving a copy on all parties and, if a hearing officer or administrative judge is conducting the contested case, by filing the motion with the office in which the hearing officer or administrative judge resides. Any such motion shall set forth a request for all relief sought, and shall set forth grounds which entitle the moving party to relief.
- (3) Time Limits; Argument — A party may request oral argument on a motion. However, parties are encouraged to submit a brief memorandum of law with the motion. Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the hearing officer or administrative judge.
- (4) Oral Argument — If oral argument is requested, the pre-hearing motion may be argued by telephone conference call.
- (5) Affidavits; Briefs and Supporting Statements
 - (a) Motions and responses thereto may be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses thereto may be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits should set forth only facts which are admissible in evidence under *T.C.A. §4—5—313*, and to which the affiants are competent to testify. Such affidavits must be delivered to the opposing party no less than ten (10) days prior to a hearing in the form provided in *T.C.A. §4—5—313*, so as to afford the opponent the opportunity to question or refute any testimony or evidence, including the opportunity to confront and cross examine adverse witnesses. Unless the opposing party within seven (7) days after delivery delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto. "Delivery" for purposes of affidavits means actual receipt.
 - (b) In the discretion of the hearing officer or administrative judge, a counsel for the TennCare Bureau may be required to submit briefs or supporting statements pursuant to a schedule established by the hearing officer or administrative judge.
- (6) Disposition of Motions; Drafting the Order
 - (a) When a prehearing motion has been made in writing or orally, the hearing officer or administrative judge shall render a decision on the motion by issuing an order.

- (b) The hearing officer or administrative judge after signing any order shall cause the order to be served forthwith upon the parties. Nothing in this rule shall preclude the right to seek interlocutory judicial review under T.C.A. §4-5-322(a).

1200-13-15-.10 DISCOVERY.

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

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

1200-13-15-.11 SUBPOENA.

The hearing officer or administrative judge, at the request of any party, shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas.

1200-13-15-.12 EVIDENCE IN HEARINGS.

In all agency hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the agency, or at the motion of any party, witnesses may be excluded prior to their testimony. The standard for admissibility of evidence, including admissibility of affidavits, is set forth at T.C.A. §4-5-313.

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

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

1200-13-15-.14 ORDER OF PROCEEDINGS.

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

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

1200-13-15-.15 INITIAL ORDER.

- (1) The initial order issued by the hearing officer or administrative judge shall be based exclusively on evidence introduced at the administrative hearing and shall contain the elements set forth at rule 1200-13-15-.01.
- (2) The initial order shall be served on all parties of record.
- (3) The initial order shall include a statement of the available procedures and time limits for seeking reconsideration and/or appeal to the Commissioner.

1200-13-15-.16 THE FINAL ORDER.

- (1) The final order shall be issued pursuant to the authority of the Commissioner of the Department of Finance and Administration or his/her designated representative. The final order shall be binding upon all parties unless it is stayed, reversed or otherwise set aside through judicial review.
- (2) The final order in a contested case shall be in writing and shall be served on all parties of record.
- (3) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.

1200-13-15-.17 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.
 - (a) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of a contested case proceeding after due notice thereof may be cause for holding such party in default pursuant to T.C.A. § 4-5-309. Failure to comply with any lawful order of the hearing officer or administrative judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case proceeding and thereby be cause for a holding of default.
 - (b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.
 - (c) The hearing officer or administrative judge determines whether the service of notice is sufficient as a matter of law, according to rule 1200-13-15-.06.
 - (d) If the notice is held to be adequate, the hearing officer or administrative judge shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1200-13-15-.06. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned if the absent party has the burden of proof or conducted without the participation of the absent party if the moving party bears the burden of proof.
 - (e) The hearing officer or administrative judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after service of such notice of default, may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing officer or administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. §4—5—317.
- (2) Effect of Entry of Default.
 - (a) Upon entry into the record of the default of an applicant or an enrollee at a contested case proceeding, the appeal shall be dismissed as to all issues on which the applicant or enrollee bears the burden of proof.
 - (b) Upon entry into the record of the default of the applicant or enrollee at a contested case hearing, the matter shall be tried as uncontested as to all issues on which the agency bears the burden of proof.
- (3) Uncontested Proceeding. When the matter is tried as uncontested, the agency has the burden of establishing its allegations by a preponderance of the evidence presented.

1200-13-15-.18 RECORD OF CONTESTED CASE PROCEEDINGS.

The official record of each contested case shall be maintained as required by 4-5-319. As particularly required by 4-5-319, a record (which may consist of a tape or similar electronic recording) shall be made of all oral contested case proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be

transcribed by the agency at its expense. If the applicant/enrollee appeals the initial order, the record will be transcribed at agency expense. This record shall be maintained for a period of time, not less than three years.

1200-13-15-.19 HEARING DECISION EVIDENCE.

Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing.

1200-13-15-.20 NOTICE OF RIGHT TO APPEAL THE INITIAL ORDER.

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

1200-13-15-.21 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE INITIAL ORDER.

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

1200-13-15-.22 NOTICE OF RIGHT TO SEEK JUDICIAL REVIEW OF THE FINAL ORDER.

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

1200-13-15-.23 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

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

1200-13-15-.24 EFFECT ON THE FINAL ORDER.

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

1200-13-15-.25 RECONSIDERATION PROCEEDINGS.

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

1200-13-15-.26 CLERICAL MISTAKES.

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

1200-13-15-.27 CODE OF JUDICIAL CONDUCT, DISQUALIFICATION AND SEPARATION OF FUNCTIONS

Hearing officers and administrative judges shall comply with the requirements concerning the code of judicial conduct set out in the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies at Chapter 1360-4-1-.20 and the requirements of T.C.A. §§ 4-5-302 and 4-5-303 concerning disqualification and separation of functions. Commissioner's designees shall also comply with the requirements of T.C.A. §§ 4-5-302 and 4-5-303.

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

The Public Necessity rules set out herein were properly filed in the Department of State on the 14th day of July, 2003, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 26th day of December, 2003. (07-12)

THE TENNESSEE HIGHER EDUCATION COMMISSION - 1540

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to Public Chapters 104 and 136, Acts of 2003, all public and private postsecondary institutions are now required to provide certain notice to new students who will be living in on-campus student housing concerning meningococcal disease and hepatitis B infection, respectively. Each of the public chapters goes into effect on July 1, 2003 and requires the Tennessee Higher Education Commission to promulgate rules to effectuate the provisions of the acts. Public necessity rules are necessary to address the application of the public chapters at the various institutions for the 2003 Fall semester.

For a copy of this public necessity rule contact Will Burns, Tennessee Higher Education Commission, Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, telephone 615-741-7571.

Richard G. Rhoda, Executive Director
Tennessee Higher Education Commission

**PUBLIC NECESSITY RULES
OF
TENNESSEE HIGHER EDUCATION COMMISSION**

**1540-1-9
IMMUNIZATIONS FOR NEWLY MATRICULATING STUDENTS**

NEW RULES

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1540-1-9-.01 General Provisions

1540-1-9-.01 GENERAL PROVISION

- (1) Each public or private postsecondary institution in the state shall provide information to all students and/or the parent or guardian of students matriculating into the institution for the first time concerning hepatitis B disease. All newly matriculating students who will be living in on-campus student housing, and/or their parent or guardian, shall also be given information concerning meningococcal disease. In each instance, the information shall be provided to the student and/or parent or guardian prior to matriculation and include the risk factors and dangers of each disease as well as information on the availability and effectiveness of the respective vaccines for persons who are at-risk for the diseases. The institutions shall utilize information from the Centers for Disease Control and/or the American College Health Association in satisfying this requirement.
- (2) Prior to matriculating into the institution, the student and/or the student's parent or guardian shall complete and sign a waiver form to indicate that the student and/or the student's parent or guardian has received the information and has chosen to have the student vaccinated or has not chosen to have the student vaccinated. The waiver may be part of the information document described above.
- (3) A student who is eighteen (18) years of age may sign the waiver, or for minors, the student's parent or guardian must sign the waiver.

- (4) The institution shall maintain the signed waiver form with any other documents related to the student's medical history and/or condition.

Authority: Public Chapters 104 and 136, Acts of 2003.

The public necessity rules set out herein were properly filed in the Department of State on the 11th day of June, 2003, and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 23rd day of December, 2003. (07-11)

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

STATEMENT OF PUBLIC NECESSITY REQUIRING PUBLIC NECESSITY RULES

Senate Bill 0497/House Bill 1716 was passed by the General Assembly on May 29, 2003 and signed by the Governor on June 19, 2003.

This Act modifies the manner in which child support is calculated in Tennessee by requiring courts to consider other children of an obligor when considering the establishment or modification of a child support order for a child whose child support case is currently before the court and then permitting the court to deviate from the presumption of child support established pursuant to Chapter 1240-2-4 of the Rules of the Tennessee Department of Human Services.

Federal law at 42 U.S.C. § 667 and 45 Code of Federal Regulations § 302.56 require Tennessee, as a condition of approval of its State plan for the operation of a child support program under Title IV-D of the Social Security Act to have in effect in Tennessee guidelines for the establishment of child support amounts awarded in Tennessee. These guidelines may be established by law, or by judicial or administrative action, as elected by the State in its plan. These guidelines create a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded. A written, specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined pursuant to criteria established by the State, is sufficient to rebut the presumption in that case.

In addition, 45 C.F.R. § 302.56(a) and (c) requires as a condition of the approval of Tennessee's State Plan for child support, that the guidelines established pursuant to 42 U.S.C. § 667 and 45 C.F.R. § 302.56 must, "at a minimum be based on specific descriptive criteria and numeric criteria and result in the computation of the support obligation".

Under 45 C.F.R. § 302.56(f) and (g), Federal regulations further provide:

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

Federal law requires that each State having a child support program have an approved State plan for the provision of child support services. See, 42 U.S.C. § 654.

Failure of the State to comply with Federal child support requirements jeopardizes Federal funding for the Title IV-A of the Social Security Act 42 U.S.C. §§ 601—619. (Temporary Assistance to Needy Families under Federal law and called Families First in Tennessee), and Title IV-D of the Social Security Act (Child Support) programs.

These sanctions are based, in part, upon the requirements of 42 U.S.C. § 602, governing the Title IV-A Block Grant program operations and funding under the State’s plan, which state:

§ 602. Eligible States; State plan

(a) In general

As used in this part, the term “eligible State” means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

...

(2) Certification that the State will operate a child support enforcement program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D.

...

Therefore, for the State to be an “eligible” State to receive the Title IV-A Block Grant funds that are used to fund Families First welfare cash grants and several related State services that are operated by the Department and by other State and local agencies, it must submit a State plan for Title IV-A Block Grant funding. That plan must be approved by the Secretary of Health and Human Services and must include a certification by the Governor that Tennessee will operate a Title IV-D child support program in compliance with the requirements of the Federal child support law at 42 U.S.C. 651 et seq.

Further in this regard, 42 U.S.C. § 603 states that a State may receive a Title IV-A grant from the Federal government to operate its welfare program if it is an “eligible” state. Therefore, failure to certify compliance in the state’s child support program could lead to the State being found not to be an “eligible” State for funding purposes.

Specific monetary penalties for non-compliance with State plan requirements for Title IV-A Block Grants are set out in 42 U.S.C. §609(a)(8)(A) and (B). The language in those provisions that state that if the Secretary of Health and Human Services finds, on the basis of an audit, that Tennessee has failed to substantially comply with the requirements of the Title IV-D Child Support Program, and has failed in the succeeding fiscal year to take sufficient corrective action to achieve appropriate compliance, then the amount of the Block Grant will be reduced by a penalty of 1% to 2% for the first year of non-compliance; 2%-3% for the second year; and 3%-5% for each succeeding year of non-compliance.

For the Title IV-D Child Support Program, the Secretary of Health and Human Services is required, pursuant to 42 U.S.C. § 655(a)(1) and (a)(2), to pay to the Department of Human Services a 66% match of all funds the Department expends in state dollar amounts for the operation of the child support program if the Department's Title IV-D State plan under 42 U.S.C. § 654 is approved. If the plan were not approved because Tennessee does not have in effect the laws required by 42 U.S.C. §§ 654(20) and 666, then the entire Federal match would be in jeopardy.

The combined total of funding for these two programs is approximately \$230,000,000.

Pursuant to Tennessee Code Annotated, § 36-5-101(e), the Tennessee Department of Human Services establishes the child support guidelines for Tennessee.

In order to effectively implement the provisions of Senate Bill 0497/House Bill 1716 pursuant to the above cited Federal laws and regulations, it is necessary to develop specific descriptive and numeric criteria to establish in the guidelines the basis upon which orders for child support will be made and how the deviation from the presumptions will be determined in considering other children for whom the obligor is legally responsible in establishing the child support award.

Therefore, pursuant to Tennessee Code Annotated, § 4-5-209(3), failure to comply with the requirements of Federal law and regulations as cited above, and the adoption of these rules is required by the United States Department of Health and Human Services and adoption of the rules through ordinary rulemaking procedures pursuant to Tennessee Code Annotated, Title 4, Chapter 5, Part 2 might jeopardize Federal funding for both the Child Support and Families First programs. The short period between passage of the Act and the implementation date does not permit the use of ordinary rulemaking procedures for the promulgation of these rules.

For a copy of these Public Necessity Rules, contact: Barbara Broersma, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE DEPARTMENT OF HUMAN SERVICES
CHILD SUPPORT DIVISION**

CHAPTER 1240-2-4

AMENDMENTS

Rule 1240-2-4-.03, Guidelines for Calculating Child Support Award, is amended by deleting paragraph (4) in its entirety and by substituting instead the following new language so that, as amended, paragraph (4) shall read as follows:

- (4) Calculation of Net Income.
 - (a) Definitions.

1. Legally Responsible.

For purposes of this paragraph the term “child or children for whom the obligor is legally responsible” or the term “legally responsible” means the children of the obligor who are:

- (i) Born of the obligor’s marriage;
- (ii) Are the legally adopted children of the obligor;
- (iii) Have been voluntarily acknowledged by the obligor pursuant to Tennessee Code Annotated, Section 24-7-113, or the voluntary acknowledgement procedure of any other State or Territory that comports with the requirements of Title IV-D of the Social Security Act, as the obligor’s children; or
- (iv) Have been determined by any court or administrative tribunal of this or any other State or Territory to be the child of the obligor.

2. Pre-Existing Orders.

The term, “pre-existing support order” or “pre-existing order” refers to:

- (i) an order that requires the obligor to make support payments for another child or children, in another case; and
- (ii) the date of the initial order for each such other case is earlier than the date of the initial order in the case immediately before court, regardless of the age of the child or children in any of the cases.

3. Child.

- (i) A person under eighteen (18) years of age, or a person who reaches eighteen (18) years while in high school until the child graduates from high school or the class of which the child is a member when the child attains eighteen (18) years of age graduates, whichever occurs first; or
- (ii) A person who is disabled as established pursuant to T.C.A. § 36-5-101(p); or
- (iii) A person who is subject to a marital dissolution agreement entered prior to the person’s eighteenth (18th) birthday that provides for the person’s educational or vocational support subsequent to the person’s eighteenth (18th) birthday, but who is less than twenty-six (26) years of age.

(b) Basic Deductions from Gross Income/Definitions.

- 1. Net income is calculated by deducting from gross income of the obligor FICA (6.2% Social Security +1.45% Medicare for regular wage earners and 12.4% Social Security + 2.9% Medicare for self-employed, as of 1991, or any amount subsequently set by Federal law as FICA tax), the amount of withholding tax deducted for a single wage earner claiming one withholding allowance (copies of appropriate table will be provided to courts with the guidelines), and the amount of any adjustment(s) or credit(s) to the obligor’s net income pursuant to subparagraphs (c), (e), (f) and (g) of this paragraph.

2. In calculating net income for obligors who are subject to Federal or Railroad Retirement programs or any other mandatory retirement plan that operates in lieu of the Social Security retirement program, the retirement contribution up to the current FICA tax rate should be deducted from the gross income.
- (c) Additional Adjustments for Pre-existing Orders of Support.
1. The priority for pre-existing orders is determined by the date of the initial order in each case. Subsequent modifications of the initial support order do not affect the priority position established by the date of the initial order for any purposes of this paragraph.
 2. When calculating the adjustments for pre-existing orders to determine the obligor's net income pursuant to subparagraph (c), only those pre-existing orders whose initial date of entry precedes the date of entry of the initial order in the case immediately under consideration shall be included.
 3. In determining net income, the amount determined in paragraph (4)(b) shall be adjusted by subtracting the amount of the current support obligation(s) ordered to be paid by the obligor pursuant to a pre-existing support order.
 4. Payments being made by the obligor on any arrearages shall not be subtracted from the obligor's gross income.
- (d) Credits and Limits to Credits for Additional Children Not Subject to Court Ordered Support.
1. In addition to the deductions provided in subparagraph (b), parts 1 and 2, and in addition to the adjustment for children under a pre-existing order as provided in subparagraph (c), a credit for additional qualifying children for whom the obligor is legally responsible and who are not subject to a pre-existing order for child support, may be considered pursuant to subparagraphs (e), (f) or (g). If granted, this credit shall apply after the determination of net income as provided in subparagraph (b) and after the deduction for pre-existing orders in subparagraph (c) are calculated.
 2. Use of Credits.
 - (i) Subject to the provisions of parts 3 and 4 of this subparagraph, the use of the credits provided in subparagraphs (e), (f) and (g) is appropriate to consider in a determination of support for children for whom support is being calculated in the case under consideration in establishing:
 - (I) The obligor's initial support order on or after July 1, 2003; or
 - (II) The amount of any subsequent upward modification of such order; or
 - (III) The amount of a support order for the child(ren) existing before or after July 1, 2003, if the application of the significant variance rule pursuant to 1240-2-4-.02(3) results in a downward modification of the order, unless the provisions of part 5, subpart (ii) below apply.
 - (ii) The provisions of this subparagraph (d) permitting the court to allow credits for additional children of the obligor for whom the obligor is legally responsible do not provide

a basis for a significant variance unless a basis exists for a significant variance pursuant to 1240-2-4-.02(3).

- (iii) The credits available under subparagraphs (e), (f) and (g) may be used by the obligor as a defense to an action or request by or on behalf of the obligee or caretaker of the child seeking an upward modification to any existing order of support.

3. No Multiple Credits.

Only one full credit under subparagraphs (e), (f) or (g) for the same case shall be permitted. Full credits for children of the obligor who are in different categories under subparagraphs (e), (f) or (g) may not be used cumulatively, except as provided by part 4 below.

4. Credits for Children in Different Categories.

- (i) If an obligor has qualifying children in more than one category under subparagraphs (e), (f) or (g), the deductions or credits for qualifying children ranked in the highest priority as established by subpart (ii) below shall be applied first, followed by the procedure for credits in cases where the obligor's children are in multiple categories.

- (ii) Priority of Support Obligations.

In multiple family situations, the adjustments to net income under this paragraph (4) shall be calculated in the following order:

- (I) Adjustments for pre-existing orders according to the date of the initial order in each case pursuant to subparagraph (c);
 - (II) Adjustments for children in the obligor's home pursuant to subparagraphs (e) or (f); and
 - (III) Adjustments for other children living outside the obligor's home pursuant to subparagraph (g).
- (iii) After applying the deductions for pre-existing orders, if any, in item (ii)(I) above, then the credit for the obligor's children in the higher priority category as described in items (ii)(II) and (III) above in subpart (ii) may be applied. Then, for each qualifying child in another category, a credit consisting of a one percent (1%) reduction from the "adjustment percentage" in subparagraph (e)2 Step 4, below, per child, may be considered, and, if appropriate, applied, to further reduce the obligor's net income.

5. No Impairment of Existing Orders.

Any credits against the adjustment percentage or against the obligor's income, pursuant to subparagraphs (e), (f), and (g), shall not result in the reduction of any child support obligation to an amount which:

- (i) Is lower than the existing order of support, if any, in the case under consideration, unless a basis for a significant variance exists pursuant to 1240-2-4-.02(3) before the credit(s) are applied; or

- (ii) Otherwise seriously impairs the ability of the custodian of the child or children in the case under consideration to maintain minimally adequate housing, food, and clothing for the children and to provide other basic necessities, as determined by the court, for the children in the case under consideration.
- (e) Credits for Other Children Living in the Home for Whom the Obligor is Legally Responsible.

1. In cases in which the obligor has children:
 - (i) For whom the obligor is legally responsible; and
 - (ii) Who are living in the obligor's household; and
 - (iii) Who are not subject to a pre-existing support order for support; and
 - (iv) Whom the obligor is actually supporting,
2. Then, in determining whether to consider those children in the obligor's household for purposes of reducing the obligor's net income or in calculating the guideline amount that would differ or deviate under this subparagraph from the presumptive child support awards established pursuant to paragraph (5), the following method shall be utilized to allow a credit against the obligor's net income:

Step 1: Determine the net income of the obligor pursuant to Rule 1240-2-4-.03(4)(b)1 and 2.

Step 2: Reduce the obligor's net income by subtracting the dollar amount of current support pursuant to pre-existing support orders (if applicable) as established in subparagraph (c), if this reduction has not already been taken.

Step 3: Determine the number of children for whom the obligor is legally responsible living in the obligor's household for whom no pre-existing court order for child support exists. Children may be deemed to be living in the obligor's household though living away from the obligor to attend school (Kindergarten through grade 12). Stepchildren of the obligor are not to be considered under this subparagraph unless the obligor has legally adopted those children.

Step 4: Adjust the obligor's net income according to the number of children for whom the obligor is legally responsible living in the obligor's household by multiplying the obligor's net income by the following appropriate percentage:

Number of Children	Adjustment Percentage
1	89.5%
2	84.0%
3	79.5%
4	77.0%
5+	75.0%

Step 5: Use the adjusted net income to determine the support amount for the child(ren) in the case under consideration pursuant to application of the guideline percentages pursuant to paragraph (5).

3. The granting of a credit pursuant to this subparagraph shall be supported by written findings of the court that shall detail the basis for the granting of the credit and shall state the amount of the child support that would have been ordered without the credit. The findings shall include a determination that application of the presumptive awards under paragraph (5) would be unjust or inappropriate and shall consider the best interests of the children for whom the support award is being established or modified.
- (f) Credits for Other Children Living in the Home for Whom the Obligor is Legally Responsible When the Other Parent Cannot Provide Support.
1. In cases in which
 - (i) Children:
 - (I) For whom the obligor is legally responsible; and
 - (II) Who are living in the obligor's household; and
 - (III) Who are not subject to a pre-existing support order for support; and
 - (IV) Whom the obligor is actually supporting, and
 - (ii) The spouse of the obligor, or the nonmarital parent of the child(ren) living in the obligor's household, is unable to financially contribute to the support of the children by reason of:
 - (I) Such parent's death;
 - (II) Incapacity;
 - (III) Incarceration; or
 - (IV) Abandonment as demonstrated by reasonable efforts to locate the absent parent,

then compute the credit according to the directions for Steps 1-5 in subparagraph (e) subtracting an additional one percent (1%) from the "adjustment percentage" in subparagraph (e)2 Step 4, for each child in this category.
 2. The granting of a credit pursuant to this subparagraph shall be supported by written findings of the court that shall detail the basis for the granting of the credit and shall state the amount of the child support that would have been ordered without the credit. The findings shall include a determination that application of the presumptive awards under paragraph (5) would be unjust or inappropriate and shall consider the best interests of the children for whom the support award is being established or modified.
- (g) Credits for Other Children Not Living in the Obligor's Household.
1. In cases in which the obligor has child(ren) for whom the obligor is legally responsible who are not living in the obligor's household and who are not subject to a pre-existing support order, for the obligor to receive an additional credit against the obligor's net income, the obligor must provide documented proof of monetary payments of support for these child(ren)

paid consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is presently under consideration by the court, but in any event, such time period shall not be less than twelve (12) months.

2. Calculation of the Credit.

- (i) The documented proof of monetary payments shall be averaged over the period of the payments to produce a weekly or monthly amount. A credit may be allowed in an amount equal to fifty percent (50%) of the weekly or monthly average of the documented monetary payments.
- (ii) The credit pursuant to this subparagraph (g) shall not exceed fifty percent (50%) of the presumptive child support award pursuant to paragraph (5) for the number of children for whom the credit is sought.
- (iii) If credits have been taken under either subparagraphs (e) or (f), then only the one percent (1%) adjustment set forth in subparagraph (d)(4)(iii) may be applied for a child in this category.

3. The granting of a credit pursuant to this subparagraph shall be supported by written findings of the court that shall detail the basis for the granting of the credit and shall state the amount of child support that would have been ordered without the credit. The findings shall include a determination that application of the presumptive awards under paragraph (5) would be unjust or inappropriate in the case before the court and shall consider the best interests of the children for whom the support award is being established or modified.

(h) High Income Obligor

- 1. If the net income of the obligor following deductions, adjustments and credits made pursuant to subparagraphs (b), (c), (e), (f) and (g) exceeds ten thousand dollars (\$10,000.00) per month, then the custodial parent must prove by a preponderance of the evidence that child support in excess of the amount, [calculated by multiplying the appropriate percentage set forth in the child support guidelines by a net income of ten thousand dollars (\$10,000.00 per month)], is reasonably necessary to provide for the needs of the minor child or children for whom support is being determined in the case specifically under consideration.
 - 2. In making its determination, the court shall consider all available income of the obligor as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children for whom support is being determined in the case specifically under consideration.
- (i) In each case of adjustments pursuant to this paragraph, the presumptive award established by paragraph (5) is determined after the calculation of all deductions from and adjustments to and credits available to the obligor have been made as determined by this subchapter .03.
 - (j) Payments of child support may be ordered to be paid weekly, biweekly (every two weeks), semi-monthly, or monthly.

Authority: T.C.A. §§ 4-5-209; 36-5-101(e), § 36-5-101(p); 71-1-105(12) and (16); 71-1-132(a)1; Acts 2003, Chapter 373; 42 U.S.C. §§ 602, 603; 42 U.S.C. § 609(a)(8)(A) and (B); 42 U.S.C. §§ 654, 655(a)(1) and (a)(2); 42 U.S.C. § 667; 45 C.F.R. §302.56.

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2003, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of December, 2003. (07-01)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Section 2 of Senate Bill 1484/House Bill 1526, as enacted by the General Assembly on May 29, 2003, directs the Department of Human Services to promulgate rules by July 1, 2003, requiring drug screens of drivers providing child care transportation.

This enactment of the General Assembly does not permit the use of regular rulemaking procedures to promulgate the rules for this subject by July 1, 2003. Therefore, pursuant to Tennessee Code Annotated, § 4-5-209(4), the Department of Human Services must use Public Necessity rules to meet the requirement that such rules be filed July 1, 2003.

For a copy of these Public Necessity Rules, contact: William B. Russell, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

Virginia T. Lodge, Commissioner
Tennessee Department of Human Services

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

**CHAPTER 1240-4-1
STANDARDS FOR GROUP CHILD CARE HOMES**

AMENDMENTS

Part 1 of subparagraph (a) of paragraph (1) of Chapter 1240-4-1-.03, Staff, is amended by adding the following new subparts (i) and (ii), so that, as amended, subparts (i) and (ii) of existing part 1 shall read as follows:

- (i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.
 - (I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug.

- (II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.
- (ii) Safety Plans.
- (I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.
 - (II) The Department may otherwise require in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.
 - (III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).
 - (IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.
 - (V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
 - (VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

Authority: T.C.A. § 4-5-209; § 71-3-502(a)(2); § 71-3-508(c); § 2, Senate Bill 1484/House Bill 1526 (2003).

Part 2 of subparagraph (c) of paragraph (1) of rule 1240-4-1-.07, Transportation, is amended by deleting subparts (ii) and (iii) in their entireties and by substituting instead the following new language, so that, as amended, subparts (ii) and (iii) shall read as follows:

- (ii) Drug Screenings.

- (I) Effective August 1, 2003, all persons who are newly employed or assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, or who are thereafter assigned any such duties under any arrangement, shall have a drug screen within ten (10) days of the assumption of such duties, in accordance with procedures established by the Department.
- (II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.
- (III) The child care agency shall immediately review the results of the drug screen upon receipt.
- (iii) Upon receipt of a positive drug screen result for a tested individual, the child care agency shall immediately:
 - (I) Notify the Department and prohibit the individual from any driving duties involving any transportation of children for the child care agency; and
 - (II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

Authority: T.C.A. § 4-5-209; § 71-3-502(a)(2); § 71-3-508(c); § 2, Senate Bill 1484/House Bill 1526, (2003).i

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2003, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of December, 2003. (07-04)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Section 2 of Senate Bill 1484/House Bill 1526, as enacted by the General Assembly on May 29, 2003, directs the Department of Human Services to promulgate rules by July 1, 2003, requiring drug screens of drivers providing child care transportation.

This enactment of the General Assembly does not permit the use of regular rulemaking procedures to promulgate the rules for this subject by July 1, 2003. Therefore, pursuant to Tennessee Code Annotated, § 4-5-209(4), the Department of Human Services must use Public Necessity rules to meet the requirement that such rules be filed July 1, 2003.

For a copy of these Public Necessity Rules, contact: William B. Russell, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

Virginia T. Lodge
Commissioner
Tennessee Department of Human

Services

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

CHAPTER 1240-4-3
LICENSURE RULES FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

AMENDMENTS**

Subparagraph (a) of paragraph (3) of Chapter 1240-4-3-.07, Staff Qualifications, is amended by adding the following new parts 1 and 2, so that, as amended, parts 1 and 2 of existing subparagraph (a) shall read as follows:

1. Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.
 - (i) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug.
 - (ii) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.
2. Safety Plans.
 - (i) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.

- (ii) The Department may otherwise require in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.
- (iii) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. §71-3-508(c).
- (iv) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.
- (v) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
- (vi) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

Authority: T.C.A. §4-5-209; § 71-3-502(a)(2); §71-3-508(c); §2, Senate Bill 1484/House Bill 1526 (2003).

Part 2 of subparagraph (c) of paragraph (1) of rule 1240-4-3-.10, Transportation, is amended by deleting subparts (ii) and (iii) in their entireties and by substituting instead the following new language, so that, as amended, subparts (ii) and (iii) shall read as follows:

- (ii) Drug Screenings.
 - (I) Effective August 1, 2003, all persons who are newly employed or assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, or who are thereafter assigned any such duties under any arrangement, shall have a drug screen within ten (10) days of the assumption of such duties, in accordance with procedures established by the Department.
 - (II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.
 - (III) The child care agency shall immediately review the results of the drug screen upon receipt.

- (iii) Upon receipt of a positive drug screen result for a tested individual, the child care agency shall immediately:
 - (I) Notify the Department and prohibit the individual from any driving duties involving any transportation of children for the child care agency; and
 - (II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

Authority: T.C.A. § 4-5-209; § 71-3-502(a)(2); § 71-3-508(c); § 2, Senate Bill 1484/House Bill 1526, (2003).

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2003, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of December, 2003. (07-05)

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

**CHAPTER 1240-4-4
STANDARDS FOR FAMILY CHILD CARE HOMES**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Section 2 of Senate Bill 1484/House Bill 1526, as enacted by the General Assembly on May 29, 2003, directs the Department of Human Services to promulgate rules by July 1, 2003, requiring drug screens of drivers providing child care transportation.

This enactment of the General Assembly does not permit the use of regular rulemaking procedures to promulgate the rules for this subject by July 1, 2003. Therefore, pursuant to Tennessee Code Annotated, § 4-5-209(4), the Department of Human Services must use Public Necessity rules to meet the requirement that such rules be filed July 1, 2003.

For a copy of these Public Necessity Rules, contact: William B. Russell, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

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

**CHAPTER 1240-4-4
STANDARDS FOR FAMILY CHILD CARE HOMES**

AMENDMENTS

Part 1 of subparagraph (a) of paragraph (1) of Chapter 1240-4-4-.03, Staff, is amended by adding the following new subparts (i) and (ii), so that, as amended, subparts (i) and (ii) of existing part 1 shall read as follows:

- (i) Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.
 - (I) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug.
 - (II) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.
- (ii) Safety Plans.
 - (I) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.
 - (II) The Department may otherwise require in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.
 - (III) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).
 - (IV) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.

- (V) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
- (VI) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

Authority: T.C.A. § 4-5-209; § 71-3-502(a)(2); § 71-3-508(c); § 2, Senate Bill 1484/House Bill 1526 (2003).

Part 2 of subparagraph (c) of paragraph (1) of rule 1240-4-4-.07, Transportation, is amended by deleting subparts (ii) and (iii) in their entireties and by substituting instead the following new language, so that, as amended, subparts (ii) and (iii) shall read as follows:

- (ii) Drug Screenings.
 - (I) Effective August 1, 2003, all persons who are newly employed or assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, or who are thereafter assigned any such duties under any arrangement, shall have a drug screen within ten (10) days of the assumption of such duties, in accordance with procedures established by the Department.
 - (II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.
 - (III) The child care agency shall immediately review the results of the drug screen upon receipt.
- (iii) Upon receipt of a positive drug screen result for a tested individual, the child care agency shall immediately:
 - (I) Notify the Department and prohibit the individual from any driving duties involving any transportation of children for the child care agency; and
 - (II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

Authority: T.C.A. § 4-5-209; § 71-3-502(a)(2); § 71-3-508(c); § 2, Senate Bill 1484/House Bill 1526, (2003).

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2003, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of December, 2003. (07-06)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Section 2 of Senate Bill 1484/House Bill 1526, as enacted by the General Assembly on May 29, 2003, directs the Department of Human Services to promulgate rules by July 1, 2003, requiring drug screens of drivers providing child care transportation.

This enactment of the General Assembly does not permit the use of regular rulemaking procedures to promulgate the rules for this subject by July 1, 2003. Therefore, pursuant to Tennessee Code Annotated, § 4-5-209(4), the Department of Human Services must use Public Necessity rules to meet the requirement that such rules be filed July 1, 2003.

For a copy of these Public Necessity Rules, contact: William B. Russell, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

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

CHAPTER 1240-4-6
LICENSURE RULES FOR CHILD CARE CENTERS SERVING SCHOOL-AGE CHILDREN

AMENDMENTS**

Subparagraph (a) of paragraph (3) of Chapter 1240-4-6-.07, Staff Qualifications, is amended by adding the following new parts 1 and 2, so that, as amended, parts 1 and 2 of existing subparagraph (a) shall read as follows:

1. Drug Screening for Child Care Vehicle Drivers Upon Reasonable Cause.

- (i) The Department, in its sole discretion, may require any individual, who drives or may drive at any time any vehicle transporting children on behalf of the agency or its contractors, to undergo a drug screening test when, in the Department's sole determination, there is reasonable cause to believe that such individual may have an impairment or possible impairment that potentially poses a risk of harm to children in the care of the agency caused by the use, or possession and potential use, of any drug.
- (ii) An individual directed to undergo such examinations or screenings may refuse to do so, but will not be permitted to drive a vehicle transporting children in the agency or have any further contact with children in the care of the child care agency until evidence is provided that is satisfactory, in the Department's discretion, to demonstrate that the individual does not represent a risk of harm to the children in the agency's care.

2. Safety Plans.

- (i) The Department may require, in its sole discretion, the child care agency to enter into a safety plan approved by the Department that prohibits or limits such individual's contact with children in the care of the child care agency pending the outcome of such testing.
- (ii) The Department may otherwise require in its sole discretion, that the child care agency enter into a long-term or permanent safety plan that prohibits or limits the driving duties by an individual described in part 1 for, or contact by such individual with, children in the care of the agency.
- (iii) Failure to adhere to the safety plan shall be grounds for action by the Department against the child care agency's license as permitted by T.C.A. § 71-3-508(c).
- (iv) The child care agency, or any individual whose employment status is directly and adversely impacted by a safety plan or by refusal to undergo an examination as directed by the Department may, at any time during the existence of the plan or during the pendency of the directive for an examination, make written request to the Director of Licensing for an intradepartmental review of the safety plan. Such review shall be conducted by the Director or the Director's designee within ten (10) business days of receipt of the written request.
- (v) Any individual or child care agency that has received an adverse decision from the intradepartmental review set forth in subpart (IV) above, may appeal such safety plan to the Department by filing a written request for an administrative hearing before the Department's Administrative Procedures Division within ten (10) business days of the Director's decision. The hearing shall be held by the Division within twenty (20) business days of the receipt of the request for an administrative hearing.
- (vi) Any safety plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed by the child care agency to the Child Care Agency Board of Review.

Authority: T.C.A. § 4-5-209; § 71-3-502(a)(2); § 71-3-508(c); § 2, Senate Bill 1484/House Bill 1526 (2003).

Part 2 of subparagraph (c) of paragraph (1) of rule 1240-4-6-.10, Transportation, is amended by deleting subparts (ii) and (iii) in their entireties and by substituting instead the following new language, so that, as amended, subparts (ii) and (iii) shall read as follows:

- (ii) Drug Screenings.
 - (I) Effective August 1, 2003, all persons who are newly employed or assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, or who are thereafter assigned any such duties under any arrangement, shall have a drug screen within ten (10) days of the assumption of such duties, in accordance with procedures established by the Department.
 - (II) Effective January 1, 2004, all existing drivers who have been previously assigned by the child care agency or its contractors or by any other person or entity as a driver of any vehicle providing child care transportation for a licensed or approved child care agency, under any arrangement and who have not been tested as required by item (I), shall have a drug screen in accordance with procedures established by the Department.
 - (III) The child care agency shall immediately review the results of the drug screen upon receipt.
- (iii) Upon receipt of a positive drug screen result for a tested individual, the child care agency shall immediately:
 - (I) Notify the Department and prohibit the individual from any driving duties involving any transportation of children for the child care agency; and
 - (II) Enter into a safety plan approved by the Department that excludes the individual from driving for the child care agency until the individual passes a drug screen test and is otherwise approved, in writing, by the Department, to provide driving duties involving the transportation of children for the child care agency.

Authority: T.C.A. § 4-5-209; § 71-3-502(a)(2); § 71-3-508(c); § 2, Senate Bill 1484/House Bill 1526, (2003).

The public necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2003, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of December, 2003. (07-07)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Tennessee Code Annotated, Section 71-3-155(e) requires that the standard of need for recipients of temporary assistance in the Families First program for the fiscal year be set by rule of the Tennessee Department of Human Services on July 1 of each year. TCA Section 71-3-155(f) further requires that the maximum grants be set, as a percentage of the standard of need, in the annual Appropriations Act or in rule of the Department. Additionally, because the amount of funding available for grants and the new standard of need is not known until the passage of the annual Appropriations Act [Section 10, Item 22, Senate Bill 1994/House Bill 2074 (2003)] which did not occur until May 29th of 2003, and because the law requires that the standard of need and grant amounts be set by rule to be effective on July 1 of the fiscal year, it is not possible to establish rules by regular rulemaking procedures.

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

Virginia T. Lodge
Commissioner
Department of Human Services

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

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

AMENDMENTS

Rule 1240-1-50-.20 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.
 3. The minimum monthly grant which can be paid is ten dollars (\$10).
- (g) Families First Need/Payment Standards
1. Tables

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	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 (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.; 4-5-209; 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 public necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2003 and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of December, 2003. (07-03)

RULEMAKING HEARINGS

THE TENNESSEE STATE BOARD OF ACCOUNTANCY - 0020

There will be a hearing before the Tennessee State Board of Accountancy to consider the promulgation of amendments to the rules pursuant to Tenn. Code Ann. § 62-1-105(e). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-202, and will take place in Room 212, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. (Central Daylight Time) on the 15th day of September, 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 findings) 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, ADA Coordinator, Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243, at (615) 741-0481.

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

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

Rule 0020-1-.04 Fees is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

RULE 0020-1-.04 FEES.

- (1) Fees charged by the Board shall be as follows:
 - (a) Initial issuance of certificate One hundred dollars (\$100.00)
 - (b) Replacement certificate Twenty-five dollars (\$25.00)
 - (c) Renewal of certificate or registration Forty dollars (\$40.00) per year or eighty dollars (\$80.00) biennially

(d) Initial firm permit	Fifty dollars (\$50.00)
(e) Renewal of firm permit	Fifty dollars (\$50.00) per year
(f) Penalty for late filing of permit, certificate or registration renewal application	Fifty dollars (\$50.00) per year or part year
(g) Application for reinstatement due late	Two hundred dollars (\$200.00), plus past fees and fifty dollar (\$50.00) penalty.
(h) Notification of intent to practice	Fifty dollars (\$50.00) per year or part year fee, sent to the Board and not the Board's designee under rule 0020-1-.13(a)
(i) Change of address late fee	Twenty-five dollars (\$25.00)

Authority: T.C.A. §§62-1-105(e)(8), 62-1-107, 62-1-108(f) and 62-1-109.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2003. (07-30)

THE TENNESSEE STATE BOARD OF ACCOUNTANCY - 0020

There will be a hearing before the Tennessee State Board of Accountancy to consider the promulgation of amendments to the rules pursuant to T.C.A. § 62-1-105(e). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-202, and will take place in Room 212, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. (Central Daylight Time) on the 15th day of September, 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 findings) 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, ADA Coordinator, Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243, at (615) 741-0481.

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

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

Chapter 0020-1 Board of Accountancy, Licensing and Registration Requirements is amended by deleting the abbreviation "T.C.A." and the term "Tennessee Code Annotated" wherever they may appear and by substituting instead the abbreviation "Tenn.Code Ann.".

Authority: T.C.A. § 62-1-105(e)(9).

Subparagraph (b) of paragraph (1) of rule 0020-1-.01 Definitions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (b) shall read:

- (b) "Accounting service" means accounting, attest, tax, consulting or management advisory services;

Authority: T.C.A. §§62-1-103 and 62-1-105(e).

Subparagraph (r) of paragraph (1) of rule 0020-1-.01 Definitions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (r) shall read:

- (r) "Resident manager" means a licensee designated by a firm to be responsible for an office location's compliance with the Act and the rules of the Board. A resident manager may be the resident manager of multiple office locations. Each office location must have a CPA resident manager, with responsibility for that office, whether that manager is an owner in the firm or not.

Authority: T.C.A. §§ 62-1-103, 62-1-105(e), and 62-1-108.

Rule 0020-1-.05 Applications is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-1-.05 APPLICATIONS.

- (1) The Board office staff or such other entity as is approved by the Board shall provide each candidate for a certificate with the appropriate application forms as accepted for current use by the Board. All applications for initial examination or reexamination shall be accompanied by the current fee being charged by the Board or such entity as is approved by the Board.
- (2) An application will not be considered filed until the application fee and examination fee required by these rules and all required supporting documents have been received, including proof of identity as determined by the Board and specified on the application form, official transcripts and proof that the candidate has satisfied the education requirement.
- (3) A candidate who fails to appear for the examination shall forfeit all fees charged for both the application and the examination.

- (4) The Board or its designee will forward notification of eligibility for the computer-based examination to NASBA's National Candidate Database.
- (5) As long as the written exam is administered the requirements for the applications shall be as follows:
 - (a) Applications for examination must be postmarked or delivered to the Board office, or such entity as is approved by the Board, at least two (2) months before the date on which the examination is to be held.
 - (b) For good cause shown, the Board may waive the deadlines established in this rule; but in no event will the Board waive a deadline to consider application material received less than thirty (30) days before the scheduled beginning of an examination. At any time before an examination, upon submission of proof suitable to the Board of death or illness in their immediate family, or personal illness, an applicant may transfer his or her examination fee to the next scheduled examination. Otherwise all fees will be forfeited and reapplication, with the appropriate fees, will be required.
 - (c) An application will not be considered filed until the examination fee required by these rules and all required supporting documents, including photographs, official transcripts and proof that the applicant has completed the education requirements, have been received by the Board or such entity approved by the Board.

Authority: T.C.A. §§62-1-105(e) and 62-1-106.

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

0020-1-.06 EXAMINATIONS.

- (1) The examination of applicants for certification shall consist of the Uniform CPA Examination supplemented with a section on ethics prepared or approved by the Board. The examination may be further supplemented with other material which the Board in its discretion deems appropriate.
- (2) Notice of the date, time and place of the written examination shall be given at least ninety (90) days prior to each examination by publication in newspapers of general circulation in the cities of Memphis, Nashville, Knoxville and Chattanooga. After April, 2004, publication in the newspapers will no longer be required. Examinations may, in the discretion of the Board, be administered in more than one (1) city in the state. Upon the implementation of a computer-based examination, eligible candidates shall be notified of the time and place of the examination or shall independently contact the Board or a test center operator identified by the Board to schedule the time and place for the examination at an approved test site. Scheduling reexaminations must be made in accordance with 9(a) below.
- (3) The examination required by Tenn.Code Ann. §62-1-106 shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the Board may require.
- (4) The Board shall cause the examination for certification to be graded by the AICPA. The Board may recognize the grades assigned by the AICPA. Applicants may request a grade review if the Board permits such, and the applicant pays whatever administrative charges that are assessed for a grade review.

- (5) A candidate shall be required to pass all test sections of the examination provided for in Tenn.Code Ann. §62-1-106(d) in order to qualify for a certificate. Upon receipt of “Advisory Grades for the Uniform CPA Examination” report from the examination provider, the Board will review and may adopt the examination grades and will report the official results to the candidate. Upon implementation of a computer-based examination, the candidate must attain the uniform passing grade established through a psychometrically acceptable standard-setting procedure and approved by the Board.
- (6) The notification given to the exam candidate regarding the grades and requirements that the candidate must achieve to pass a particular exam shall govern the grading of that exam.
- (7) All examination candidates who take a written examination prior to April, 2004 shall be required to pass all sections of the examination provided for in Tenn.Code Ann. §62-1-106(d), in order to qualify for a certificate.
- (8) The following grading system shall apply to the written CPA examination through the last written exam:
 - (a) A passing grade for each section shall be a minimum grade of seventy-five (75).
 - (b) If at a given sitting of the examination an applicant passes two (2) or more but not all sections, then the applicant shall be given credit for those sections that the applicant has passed and need not sit for reexamination in those sections, provided that:
 1. At that sitting the applicant wrote all sections of the examination for which the applicant does not have credit;
 2. The applicant attained a minimum grade of fifty (50) on each section taken at that sitting;
 3. The applicant passed the remaining sections of the examination within six (6) consecutive examinations given after the one (1) at which the first sections were passed;
 4. At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections for which the applicant does not have credit; and
 5. In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of fifty (50) on each section taken at that sitting.
 - (c) An applicant shall be given credit for any and all sections of an examination passed in another state if such credit would have been given, under then applicable requirements, had the applicant taken the examination in this State.
 - (d) The Board may in particular cases waive or defer any of the requirements of paragraphs (7) and (8) regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant’s control, the applicant was unable to meet such requirement(s).
- (9) The following shall apply to the computer-based Uniform CPA Examination:
 - (a) Upon the implementation of a computer-based examination, a candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for six (6) three-month exam cycles, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken the remaining test sections.

1. Candidates must pass all four (4) test sections of the Uniform CPA Examination within the next six (6) three-month exam cycles.
 2. Candidates cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month cycle in which candidates have an opportunity to take the CPA examination (comprised of two (2) months in which the examination is available to be taken and one (1) month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Candidates may take the examination for two (2) out of the three (3) months within an examination window.
 3. In the event a candidate does not pass all four (4) test sections of the Uniform CPA Examination within the next six (6) three-month cycles, credit for any test section(s) passed outside the six (6) three-month cycles will expire and that test section(s) must be retaken.
- (b) Candidates having earned conditional credits on the written examination, as of the start date of the computer-based Uniform CPA Examination, will retain conditional credits. “Conditional credits” means credits earned by a candidate from the written exam that are credited toward the computerized exam. The following conditional credits are for the corresponding test sections of the computer-based CPA examination:

<u>Written Examination</u>	=	<u>Computer-Based Examination</u>
Auditing	=	Auditing and Attestation
Financial Accounting and Reporting (FARE)	=	Financial Accounting and Reporting
Accounting and Reporting (ARE)	=	Regulation
Business Law and Professional Responsibilities (LPR)	=	Business Environment and Concepts

“Conditional status” means candidates who have passed the test section(s) under the written examination shall be allowed the same amount of time under the computerized examination. Conditional status allows candidates passing the test section(s) under the written examination up to six (6) six-month exam cycles rather than six (6) three-month exam cycles to complete the test sections. Candidates who have attained conditional status as of the start date of the computer-based Uniform CPA Examination will be allowed a transition period to complete any remaining test sections of the CPA examination. The transition is the maximum number of opportunities remaining that a candidate has (who has earned conditional credit from the written examination at the start of the computer-based CPA examination) to complete all remaining test sections, or the number of remaining opportunities under the written examination, multiplied by six (6) months, whichever is first exhausted.

2. If a conditional status candidate does not pass all remaining test sections during the transition period, conditional credits earned under the paper-and-pencil examination will expire and the candidate will lose credit for the test sections earned under the paper-and-pencil examination.

- i. Any test section(s) passed during the transition period is subject to the conditioning provisions of the computer-based examination as indicated in the aforementioned conditioning recommendation.
 - ii. A previously conditioned candidate will not lose conditional credit for a test section of the computer-based examination that is passed during the transition period, even though more than eighteen (18) months may have elapsed from the date the test section is passed, until the end of the transition period.
- (c) A candidate shall retain credit for any and all test sections of an examination passed in another state if such credit would have been given, under then applicable requirements, if the candidate had taken the examination in this State.
- (d) The Board may in particular cases extend the term of conditional credit notwithstanding the requirements of these rules, upon a showing that the credit was lost by reason of circumstances beyond the candidate's control.
- (e) A candidate shall be deemed to have passed the Uniform CPA Examination once the candidate holds at the same time valid credit for passing each of the four (4) test sections of the examination. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.
- (10) An applicant may be required to pass an examination covering the rules of ethics and professional conduct promulgated by the Board. Such examination may be part of the examination required in Tenn.Code Ann. §62-1-106(d) or may be in a separate examination.
- (11) The Board may provide for a third party administering the examination to charge each applicant a fee for each section of the examination or reexamination taken by the applicant.
- (12) The candidate shall schedule each test section with the Board or its designee and pay a candidate testing fee that includes the actual fees charged by the AICPA, NASBA, and the Test Delivery Service Provider, as well as reasonable application fees established by the Board.
- (13) Notwithstanding any other provisions under these rules, the Board may postpone scheduled examinations, release of grades, or the issuance of certificates due to a breach of examination security, unauthorized acquisition or disclosure of the contents of an examination, suspected or actual negligence, errors, omissions, or irregularities in conducting an examination, or for any other reasonable cause or unforeseen circumstance.

Authority: *T.C.A. §§ 62-1-105(e)(9) and 62-1-106.*

Rule 0020-1-.07 Cheating is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-1-.07 CHEATING.

- (1) Cheating by a candidate in applying for, taking or subsequent to the examination invalidates any grade otherwise earned by a candidate on any test section of the examination, and may warrant summary expulsion from the test site and disqualification from taking the examination for a specified period of time.

- (2) For purposes of this rule, the following actions or attempted activities, among others, may be considered cheating:
 - (a) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;
 - (b) Communication between candidates inside or outside the test site or copying another candidate's answers while the examination is in progress;
 - (c) Communication with others inside or outside the test site while the examination is in progress;
 - (d) Substitution of another person to sit in the test site instead of a candidate;
 - (e) Reference to crib sheets, text books or other material or electronic media (other than that provided to the candidate as part of the examination) inside or outside the test site while the examination is in progress;
 - (f) Violating the nondisclosure prohibitions of the examination or aiding or abetting another in doing so;
 - (g) Retaking or attempting to retake a test section by an individual holding a valid certificate or by a candidate who has unexpired credit for having already passed the same test section, unless the individual has been directed to retake a test section pursuant to Board order or unless the individual has been expressly authorized by the Board to participate in a "secret shopper" program.
- (3) In any case where it appears that cheating has occurred or is occurring, the Board or its representatives may either summarily expel the candidate involved from the examination or move the candidate to a position in the test center away from other examinees where the candidate can be watched more closely.
- (4) In any case where the Board believes that it has evidence that a candidate has cheated on the examination, including those cases where the candidate has been expelled from the examination, the Board shall conduct an investigation and may conduct a hearing following the examination session for the purpose of determining whether or not there was cheating, and if so what remedy should be applied. In such proceedings, the Board shall decide:
 - (a) Whether the candidate shall be given credit for any portion of the examination completed in that session; and
 - (b) Whether the candidate shall be barred from taking the examination, and if so, for what period of time.
- (5) In any case where the Board or its representative permits a candidate to continue taking the examination, it may, depending on the circumstances:
 - (a) Admonish the candidate;
 - (b) Seat the candidate in a segregated location for the rest of the examination;
 - (c) Keep a record of the candidate's seat location and identifying information, and the names and identifying information of the candidates in close proximity of the candidate;

- (d) Prior to the introduction of a computer-based examination, notify the AICPA of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed, the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved;
 - (e) Upon introduction of a computer-based examination, the Board or its representative shall notify the National Candidate Database and the AICPA and/or the test center of the circumstances, so that the candidate may be more closely monitored in future examination sessions.
- (6) In any case where a candidate is refused credit for any part of the examination taken, or is disqualified from taking other parts, the Board shall provide the candidate with a written statement containing its findings.
 - (7) In any case in which a candidate is refused credit for any test section of an examination taken, disqualified from taking any test section, or barred from taking the examination in the future, the Board will provide to the Board of Accountancy of any other state to which the candidate may apply for the examination, information as to the Board's findings and actions taken.

Authority: T.C.A. §62-1-105.

Rule 0020-1-.08 Renewal of Licenses is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-1-.08 RENEWAL OF LICENSES.

- (1) All even numbered licenses shall expire on December 31 of each even numbered year and all odd numbered licenses shall expire on December 31 of each odd numbered year. All licenses may be renewed at any time during the month of December in the year in which they expire, by submitting to the Board a biennial renewal application form and the appropriate fee. For the purpose of this rule the license ID number shall be used.
- (2) An individual or entity choosing not to renew their license shall notify the Board of their intention prior to the expiration of that license, and they shall surrender the license to the Board immediately upon its expiration.
- (3) Applications for the renewal of certificates and registrations pursuant to the Act shall be made on a form provided by the Board and shall be filed no later than the expiration date set by these rules. Applications will not be considered filed until the applicable fee prescribed in these rules is received.
- (4) Applications for renewal of certificates or registrations shall be accompanied by evidence satisfactory to the Board that the applicant has complied with the continuing professional education requirements under Tenn.Code Ann. § 62-1-107(d) and Chapter 0020-5 of the Board's rules. The Board may request additional evidence from licensees for continuing professional education requirements including continuing professional education audits (which require CPE course completion documentation). Listings of CPE courses on renewal forms are required; however, the listings are not considered evidence for this rule.
- (5) Licenses shall be subject to late renewal for a period of three (3) months following their expiration date by payment of the prescribed renewal fee(s) and a late renewal penalty.

- (6) Any individual or entity desiring to renew a license more than three (3) months but less than one (1) year after its expiration date shall submit a new application for licensure to the Board accompanied by the appropriate fee for examination; provided however, that the Board may, in its discretion, waive such examination, assess late renewal penalties or impose civil penalties.
- (7) Licenses not renewed for over one (1) year and which have not been surrendered to the Board under paragraph two (2) of this rule, shall be deemed to have lapsed. Any individual or entity desiring to renew a lapsed license shall comply with the requirements of paragraph four (4) of this rule and paragraph five (5) of rule 0020-5-.03. The CPE hours required to be completed to reinstate a lapsed license are considered penalty hours and may not be used to offset the CPE hours required for renewal of a license.

Authority: T.C.A. §§ 62-1-105, 62-1-107, 62-1-108, 62-1-109, and 62-1-111.

CHAPTER 0020-2 EDUCATIONAL AND EXPERIENCE REQUIREMENTS

AMENDMENTS

Chapter 0020-2 Educational and Experience Requirements is amended by deleting the abbreviation “T.C.A.” and the term “Tennessee Code Annotated” wherever they may appear and by substituting instead the abbreviation “Tenn. Code Ann..”.

Authority: T.C.A. §62-1-105(e)(9).

0020-2-.01 RECOGNIZED COLLEGES AND UNIVERSITIES.

Paragraph (5) of rule 0020-2-.01 Recognized Colleges and Universities is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (5) shall read:

- (5) If an applicant’s degree was received at an accredited college or university as defined in paragraphs 3 and 4 of this rule, but the education program used to qualify the applicant included courses taken at either a two-year or a four-year accredited or non-accredited institution either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which the applicant’s baccalaureate degree was received; provided, however, that the courses were either accepted by virtue of inclusion in an official transcript or by certification to the Board.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-106.

Rule 0020-2-.02 Education is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-2-.02 EDUCATION.

- (1) (a) For the purposes of Tenn Code Ann. §62-1-106(c), the education requirements for a CPA certificate, which must be met no later than the date of application for the first sitting for the Uniform CPA Examination, shall be a baccalaureate or higher degree which contains, as a minimum, one hundred fifty (150) semester hours or two hundred twenty-five (225) quarter hours from an accredited college

or university (as specified in rule 0020-2-.01), which offers a baccalaureate degree, including a total education program with a concentration in accounting and general business as follows:

1. Twenty-four (24) semester or thirty-six (36) quarter hours in accounting education including the elementary level;
 2. Not more than three (3) semester or four (4) quarter hours may be internship programs which may be applied to the twenty-four (24) semester hours or thirty-six (36) quarter hours in accounting; and
 3. Twenty-four (24) semester or thirty-six (36) quarter hours in general business education in one (1) or more of the following:
 - (i) Algebra, Calculus, Statistics, Probability
 - (ii) Business Communication
 - (iii) Business Law
 - (iv) Economics
 - (v) Ethics
 - (vi) Finance
 - (vii) Management
 - (viii) Technology/Information Systems
 - (ix) Marketing
- (b)
1. For purposes of this rule, accounting hours, other than elementary courses, above the minimum requirement, may be substituted for general business education.
 2. For purposes of this rule, candidates must have at least twelve (12) semester hours or eighteen (18) quarter hours of accounting education and at least twelve (12) semester or eighteen (18) quarter hours of general business courses at the upper division level, junior level courses or higher.
 3. For purposes of this rule, one (1) graduate hour from a recognized college or university will count as one and one half (1.5) credit hours.
- (2) For purposes of this rule, hours taken above the hours required to meet the baccalaureate degree requirement should be taken in courses at the upper division or graduate level in subject areas that would enhance the professional competency, knowledge and skills of a candidate seeking to become a CPA.

Authority: T.C.A. §§62-1-105(e)(3) and 62-1-106.

**CHAPTER 0020-3
RULES OF PROFESSIONAL CONDUCT**

Amendment Chapter 0020-3 Rules of Professional Conduct is amended by deleting the abbreviation “T.C.A.” and the term “Tennessee Code Annotated” wherever they may appear and by substituting instead the abbreviation “Tenn.Code Ann.”.

Authority: T.C.A. §62-1-105(e)(9).

Rule 0020-3-.11 Records is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0020-3-.11 RECORDS.

- (1) A licensee shall, upon request made within a reasonable time, furnish to his or her client or former client:
 - (a) A copy of any report or other records belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client’s account. The licensee may make and retain copies of such documents when they form the basis for work performed by him;
 - (b) Any accounting or other records belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client’s premises or received from the client’s account. The licensee may make and retain copies of such documents when they form the basis for work performed by him; and
 - (c) A copy of the licensee’s working papers, to the extent that such working papers include records which would ordinarily constitute part of the client’s books and records and are not otherwise available to the client, to include but not be limited to general ledgers, general journals, fixed asset and depreciation records. Provided, however, that nothing in this rule shall require a licensee to furnish any work product to his or her client or others before the client has made satisfactory arrangements for payment for services rendered to or on behalf of such client.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-115.

**CHAPTER 0020-5
CONTINUING EDUCATION**

AMENDMENTS

Chapter 0020-5 Continuing Education is amended by deleting the abbreviation “T.C.A.” and the term “Tennessee Code Annotated” wherever they may appear and by substituting instead the abbreviation “Tenn. Code Ann.”.

Authority: T.C.A. §62-1-105(e)(9).

Rule 0020-5-.03 Basic Requirements is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-5-.03 BASIC REQUIREMENTS.

- (1) A license holder seeking regular biennial renewal shall, as a prerequisite for such renewal, certify that he or she has completed at least eighty (80) hours of qualified continuing professional education during the immediately preceding two-year period, with no less than twenty (20) hours of the required eighty (80) hours to have been completed in each year of the period, and further provided that:
 - (a) All license holders shall complete at least forty (40) hours of the required eighty (80) hours in the subject areas of accounting, accounting ethics, attest, taxation, or management advisory services;
 - (b) License holders engaged in the attest function, shall biennially complete at least twenty (20) hours in the subject areas of attest and accounting theory and practice in fulfilling the above requirements;
 - (c) License holders engaged to testify in a Tennessee court(s) as expert witnesses in the areas of accounting, attest, management advisory services, or tax shall have completed, within the current or most recent renewal period, at least twenty (20) hours in the subject area(s) (as noted in this paragraph) concerning such expert testimony; and
 - (d) Up to forty (40) CPE hours taken in excess of the eighty (80) hour requirement for each two-year period may be applied to the requirement of the next succeeding two-year renewal cycle. There will be no carry over of CPE credits available after December 31, 2005.
- (2) A license holder seeking to renew an initial certificate issued less than two (2) years but more than one (1) year prior to expiration must provide evidence of having completed at least forty (40) hours of such continuing education, of which twenty (20) hours shall be in the subject areas of accounting, accounting ethics, attest, tax, or management advisory services.
- (3) Upon application supported by such evidence as the Board may require, those licensees, not practicing in Tennessee, who do not perform or offer to perform for the public one (1) or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements or one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, may be exempted from any continuing professional education requirements provided that:
 - (a) Licensees not practicing in Tennessee, granted such an exemption must place the word “inactive” adjacent to their CPA title or PA title when used in any written form with the exception of their certificate or registration;
 - (b) Those individuals who are inactive and have reached fifty-five (55) years of age may substitute the word “retired” for the word “inactive”;
 - (c) Individuals exempt under this paragraph must complete eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services, during the twenty-four (24) month period preceding the date of their request for the reactivation of their license. The CPE hours required to reactivate a license may also be used as credit toward the renewal requirement so long as those hours are completed within the two (2) year window prior to the licensee’s next December 31 renewal date.
- (4) Upon application supported by such evidence as the Board may require, licensees age seventy (70) and over, disabled for more than six (6) months or in active military service may be exempted from payment of a license renewal fee and/or CPE requirements so long as they do not practice public accountancy or offer accounting services to the public.

- (5) An applicant for renewal whose license has lapsed as set forth under Rule 0020-1-.08(7) shall complete no less than eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services, during the six (6) month period preceding the date of reapplication.
- (6) A non-resident licensee seeking renewal of a license in this state shall meet the CPE requirement of this rule by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal office is located.
 - (a) Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal office is located by signing a statement certifying to that effect on the renewal application of this state.
 - (b) If the state in which a non-resident licensee's principal office is located has no CPE requirements for renewal of a license, the non-resident licensee must comply with all CPE requirements for renewal of a license in this state.

Authority: T.C.A. §§62-1-105(e)(3), 62-1-107(d) and (e), and 62-1-111.

CHAPTER 0020-6 PEER REVIEW PROGRAM

AMENDMENTS

Chapter 0020-6 Peer Review Program is amended by deleting the abbreviation "T.C.A." and the term "Tennessee Code Annotated" wherever they may appear and by substituting instead the abbreviation "Tenn. Code Ann.".

Authority: T.C.A. § 62-1-105(e)(9).

Rule 0020-6-.01 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-6-.01 DEFINITIONS.

- (1) For purposes of this Chapter, unless the context otherwise requires:
 - (a) "Approved peer review program" means any peer review program conducted by the Board, the Public Company Accounting Oversight Board (PCAOB), the Tennessee Society of Certified Public Accountants, the AICPA or any other similar program conducted by another individual or entity approved by the Board;
 - (b) "Licensee" means certified public accountant or public accountant;
 - (c) "Firm" means CPA firm and PA firm as defined in Tenn.Code Ann. §62-1-103;
 - (d) "Firm location" means an individual office location of a firm;
 - (e) "Peer Review" shall be defined as in Tenn.Code Ann. §62-1-103.

Authority: T.C.A. §§62-1-105(e)(6) and 62-1-201.

Rule 0020-6-.04 Basic Requirements is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0020-6-.04 BASIC REQUIREMENTS.

- (1) Each firm location required to hold a permit to practice under Tenn.Code Ann. §62-1-108, which performs attest services, shall be covered by a peer review at least once every three (3) years with a report of that review to be submitted to the Committee. However, the initial review must be completed by August 31 of the next calendar year following the initial date of issuance of the firm permit.
- (2) Each firm location that performs one (1) or more attest engagement(s) shall have an on-site peer review. Firm locations that perform only compilations or reviews in accordance with SSARS may have an off-site peer review.
- (3) Each firm is responsible for having the review(s) performed at its own cost by a reviewer approved by the Committee or in the alternative, submitting proof of compliance with an approved peer review program.
- (4) Failure of a firm location to be included in a peer review performed in a timely manner may result in the denial of the renewal of the location's permit to practice.
- (5) Firms with multiple locations may submit a single peer review report covering all locations.
- (6) Firm locations not providing attest services in this state shall not be required to undergo a peer review.
- (7) The Peer Review Program of the Board does not provide for reviews of Audits of Governmental Grant Recipients, Publicly Traded Companies, or Financial Institutions. Those reviews must be obtained through one (1) of the other approved peer review programs.
- (8) Firms receiving peer reviews under the PCAOB program will also be required to have a peer review under an approved peer review program that covers the portion of the firms practice not regulated by the U.S. Securities and Exchange Commission.

Authority: T.C.A. §§62-1-105(e)(6) and 62-1-201.

Paragraph (1) of rule 0020-6-.05 Reviewers and Reviews is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (1) shall read:

0020-6-.05 REVIEWERS AND REVIEWS.

- (1) All individuals desiring to perform peer reviews within the scope of this chapter must be approved by the Committee prior to undertaking such performance. Approval shall be granted upon proof that the individual:
 - (a) is a licensee in good standing, actively engaged in providing attest services, possesses adequate accounting and/or attest experience and has a current knowledge of applicable professional standards, and
 - (b) has completed a peer review training course(s) that has been approved by the Committee and completes a refresher review course every three (3) years hereafter.

Authority: T.C.A. §§62-1-105(e)(6) and 62-1-201.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 31st day of July, 2003. (07-31)

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

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of rules. 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 Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 16th day of September, 2003.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division 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 Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 and (615) 741-6500.

For a copy of this notice of rulemaking hearing contact: Eric J. Stansell, Staff Attorney, Office of Legal Counsel, Davy Crockett Tower, Fifth Floor, Nashville, Tennessee 37243, Department of Commerce and Insurance, and (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-52
MORTALITY TABLES**

AMENDMENTS

Chapter 0780-1-52 Mortality Tables is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

**CHAPTER 0780-1-52
MORTALITY TABLES**

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0780-1-520-.01 ANNUITY MORTALITY TABLES

- (1) Purpose - The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table “a”, the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.
- (2) Definitions.
 - (a) As used in rule this rule “1983 Table ‘a’” means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.
 - (b) As used in this rule “1983 GAM Table” means that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners.
 - (c) As used in this rule “1994 GAR Table” means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task force and shown on pages 866-867 of Volume XLVII of the *Transactions of the Society of Actuaries* (1995).
 - (d) As used in this “Annuity 2000 Mortality Table” means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 240 of Volume XLVII of the *Transactions of the Society of Actuaries* (1995).
- (3) Individual Annuity or Pure Endowment Contracts.
 - (a) Except as provided in subsections (b) and (c) of this section, the 1983 Table “a” is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after March 13, 1978.
 - (b) Except as provided in Subsection (c) of this section, either the 1983 Table “a” or the annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1985.
 - (c) Except as provided in subsection (d) of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2004.
 - (d) The 1983 Table “a” without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2004, solely when the contract is based on life contingencies and issued to fund periodic benefits arising from:
 1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
 2. Settlements involving similar actions such as worker’s compensation claims; or

3. Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.
- (4) Group Annuity or Pure Endowment Contracts.
 - (a) Except as provided in Subsections B and C of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for an annuity or pure endowment purchased on or after March 13, 1978, under a group annuity or pure endowment contract.
 - (b) Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after July 1, 1985, under a group annuity or pure endowment contract.
 - (c) The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2004, under a group annuity or pure endowment contract.
 - (5) Application of the 1994 GAR Table
In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1-AA_x)^n$$

where the q_x^{1994} and AA_x s are as specified in the 1994 GAR Table.

Authority: T.C.A. §§56-1-403 and 56-2-301.

0780-1-52-.02 SMOKER/NONSMOKER MORTALITY TABLES.

- (1) Purpose – The purpose of rule 0780-1-52-.02 is to permit the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits for plans of insurance with separate premium rates for smokers and nonsmokers.
- (2) Definitions.
 - (a) As used in rule 0780-1-52-.02, "1980 CSO Table, with or without Ten-Year Select Mortality Factor" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Mortality Table, with or without Ten-Year Select Mortality Factors. The same select factors will be used for both smokers and nonsmokers tables.
 - (b) As used in rule 0780-1-52-.02, "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individuals Ordinary

Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

- (c) As used in rule 0780-1-52-.02, “1958 CSO Table” means that mortality table developed by the Society of Actuaries Special Committee on New Mortality Tables, incorporated in the NAIC Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the Commissioners 1958 Standard Ordinary Mortality Table.
 - (d) As used in rule 0780-1-52-.02, “1958 CET Table” means that mortality table developed by the Society of Actuaries Special Committee on New Mortality Tables, incorporated in the NAIC Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the Commissioners 1958 Extended Term Insurance Table.
 - (e) As used in rule 0780-1-52-.02, the phrase “smoker and nonsmoker mortality tables” refers to the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the tables defined in (a) through (e) of this section.
 - (f) As used in rule 0780-1-52-.02, the phrase “composite mortality tables” refers to the mortality tables defined in (a) through (e) of this section with rates of mortality that do not distinguish between smokers and nonsmokers.
- (3) Alternate Tables.
- (a) For any policy of insurance delivered or issued for delivery in this state after the operative date of T.C.A. §56-7-401 (h) (11), for that policy form and before January 1, 1989, at the option of the company and subject to the conditions stated in section 4 of rule 0780-1-52-.02,
 - 1. the 1958 CSO Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and
 - 2. the 1958 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table, for use in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits; Provided that for any category of insurance issued on female lives with minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits determined using the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables, such minimum values may be calculated according to an age not more than six years younger than the actual age of the insured; Provided further that the substitution of the 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables is available only if made for each policy of insurance on a policy form delivered or issued for delivery on or after the operative date for that policy form and before a date not later than January 1, 1989.
 - (b) For any policy of insurance delivered or issued for delivery in this state after the operative date of T.C.A. §56-7-401 (h) (11), for that policy form, at the option of the company and subject to the conditions stated in section 4 of rule 0780-1-52-.02,
 - 1. the 1980 CSO Smoker and Nonsmoker Mortality Tables, with or without Ten-Year Select Mortality Factors, may be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors,

2. the 1980 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table for use in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.
- (4) Conditions - For each plan of insurance with separate rates for smokers and nonsmokers an insurer may:
- (a) use composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits,
 - (b) use smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by T.C.A. § 56-1-403 (d) (5), and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits, or
 - (c) use smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

Authority: T.C.A. §§56-1-403, 56-2-301 and 56-7-401.

0780-1-52-.03 MIXED GENDER MORTALITY TABLES.

- (1) Purpose - The purpose of rule 0780-1-52-.03 is to permit individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women. No change in minimum valuation standards is implied by this rule.
- (2) Definitions.
 - (a) As used in rule 0780-1-52-.03, “1980 CSO Table, with or without Ten-Year Select Mortality Factors” means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.
 - (b) As used in rule 0780-1-52-.03, “1980 CSO Table (M), with or without Ten-Year Select Mortality Factors” means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with out without Ten-Year Select Mortality Factors.
 - (c) As used in rule 0780-1-52-.03, “1980 CSO Table (F), with or without Ten-Year Select Mortality Factors” means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.
 - (d) As used in rule 0780-1-52-.03, “1980 CET Table” means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

- (e) As used in rule 0780-1-52-.03, “1980 CET Table (M)” means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.
 - (f) As used in rule 0780-1-52-.03, “1980 CET Table (F)” means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.
 - (g) As used in this rule, “1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables” means the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the 1980 CSO and 1980 CET Mortality tables by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and adopted by the NAIC in December 1983.
- (3) Rule - For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state after the operative date of T.C.A. § 56-7-401 (h) (11), for that policy form,
- (a) a mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without Ten-Year Select Mortality Factors may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and
 - (b) a mortality table which is of the same blend as used in (a) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) may at the option of the company be substituted for the 1980 CET Table, for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

The following tables will be considered as the basis for acceptable tables:

1. 100% Male 0% Female for tables to be designated as the “1980 CSO-A” and “1980 CET-A” tables.
2. 80% Male 20% Female for tables to be designated as the “1980 CSO-B” and “1980 CET-B” tables.
3. 60% Male 40% Female for tables to be designated as the “1980 CSO-C” and “1980 CET-C” tables.
4. 50% Male 50% Female for tables to be designated as the “1980 CSO-D” and “1980 CET-D” tables.
5. 40% Male 60% Female for tables to be designated as the “1980 CSO-E” and “1980 CET-E” tables.
6. 20% Male 80% Female for tables to be designated as the “1980 CSO-F” and “1980 CET-F” tables.
7. 0% Male 100% Female for tables to be designated as the “1980 CSO-G” and “1980 CET-G” tables.

Tables 1. and 7. are not to be used with respect to policies issued on or after July 1, 1985, except where the proportion of persons insured is anticipated to be 90 % or more of one sex or other except for certain policies converted from group insurance. Such conversions issued on or after January 1, 1986, must use Mortality Tables based on the blend of lives by sex expected for such policies if such group conversions are considered as extensions of the Norris

decision. This consideration has not been clearly defined by court or legislative action in all jurisdictions. Table 1 is the same as 1980 CSO Table (M) and 1980 CET Table (M) and Table 7. is the same as 1980 CSO Table (F) and 1980 CET Table (F).

(4) Alternate Rule

In determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits for any policy of insurance on the life of either a male or female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of T.C.A. §56-7-401(h)(11), for that policy form, in addition to the mortality tables that may be used according to Section 3 of rule 0780-1-52-.03,

- (a) a mortality table which is a blend of the male and female rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, with or without Ten-Year Select Mortality Factors, may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and
- (b) A mortality table which is of the same blend as used in (i) but applied to form a blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table may at the option of the company be substituted for the 1980 CET Table.

The following blended mortality tables will be considered acceptable:

SA:	100% Male	0% Female smoker tables designated as "1980 CSO-SA" and "1980 CET-SA" Tables.
SB:	80% Male	20% Female smoker tables designated as "1980 CSO-SB" and "1980 CET-SB" Tables.
SC:	60% Male	40% Female smoker tables designated as "1980 CSO-SC" and "1980 CET-SC" Tables.
SD:	50% Male	50% Female smoker tables designated as "1980 CSO-SD" and "1980 CET-SD" Tables.
SE:	40% Male	60% Female smoker tables designated as "1980 CSO-SE" and "1980 CET-SE" Tables.
SF:	20% Male	80% Female smoker tables designated as "1980 CSO-SF" and "CET-SF" Tables.
SG:	0% Male	100% Female smoker tables designated as "1980 CSO-SG" and "1980 CET-SG" Tables.
NA:	100% Male	0% Female nonsmoker tables designated as "1980 CSO-NA" and 1980 CET-NA" Tables.
NB:	80% Male	20% Female nonsmoker tables designated as "1980 CSO-NB" and "1980 CET-NB" Tables.
NC:	60% Male	40% Female nonsmoker tables designated as "1980 CSO-NC" and "1980 CET-NC" Tables.
ND:	50% Male	50% Female nonsmoker tables designated as "1980 CSO-NS" and "1980 CET-NE" Tables.
NE:	40% Male	60% Female nonsmoker tables designated as "1980 CSO-NE" and "1980 CET-NE" Tables.
NF:	20% Male	80% Female nonsmoker tables designated as "1980 CSO-NF" and "1980 CET-NF" Tables.

NG: 0% Male 100% Female nonsmoker tables designated as “1980 CSO-NG” and “1980 CET-NG” Tables.

Tables SA, SG, NA, and NG are not acceptable as blended tables unless the proportion of persons insured is anticipated to be 90% or more of one sex or the other.

- (5) Unfair Discrimination - It shall not be a violation of T.C.A Title 56, Chapter 8, for an insurer to issue the same kind of policy of life insurance on both sex distinct and sex neutral basis.

Authority: T.C.A. §§56-2-301 and 56-7-401.

0780-1-52-.04 2001 CSO MORTALITY TABLE

- (1) Purpose – The purpose of this subchapter is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table for use in determining the minimum standard of valuation and nonforfeiture benefits for life insurance policies.
- (2) Definitions. The following words and terms, when used in this regulation, shall have the following meanings, unless the context clearly indicates otherwise.
- (a) As used in Rule 0780-1-52-.04 “2001 CSO Mortality Table” means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002. Unless the context indicates otherwise, the 2001 CSO Mortality Table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.
- (b) As used in Rule 0780-1-52-.04 “2001 CSO Mortality Table (F)” means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.
- (c) As used in Rule 0780-1-52-.04 “2001 CSO Mortality Table (M)” means that the mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.
- (d) As used in Rule 0780-1-52-.04 “Composite mortality tables” means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.
- (e) As used in Rule 0780-1-52-.04 “Smoker and nonsmoker” mortality tables means those mortality tables with separate rates of mortality for smokers and nonsmokers.
- (3) Application.
- (a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this subchapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004, and before the date specified in subsection (b) of this section to which Tennessee Code Annotated Section 56-1-403 is applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

- (b) Subject to the conditions stated in this regulation, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Tennessee Code Annotated Section 56-1-403 is applicable.
 - (c) The minimum basis for computation of values related to extended term benefits will be the 2001 CSO Mortality Table pursuant to the requirements of this subchapter.
 - (d) The Commissioner of Commerce and Insurance adopts by reference the 2001 CSO Mortality Table. The table is available from the Actuarial Section, Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243, or on the internet by accessing the department's website at www.state.tn.us/commerce/.
- (4) Conditions.
- (a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:
 - 1. Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
 - 2. Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by T.C.A. § 56-1-403(d)(5) and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
 - 3. Smoker and nonsmoker mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.
 - (b) For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.
 - (c) For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form.
 - (d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan of a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in the Actuarial Opinion and Memorandum Regulation of the Tennessee Insurance Regulations. A company shall be exempt from this requirement if it only does business in this state and in no other state to the extent such company has not elected to use the 2001 CSO Mortality Table.
- (5) Applicability of the 2001 CSO Mortality Table to the Valuation of Life Insurance Policies Appendix A-830 of the National Association of Insurance Commissioners Accounting Practices and Procedures Manual (the "Appendix").
- (a) Subject to the transition dates set forth in this subchapter, for any report due after effectiveness hereof and in which the National Association of Insurance Commissioners Accounting Practices and Procedures Manual shall not have been amended to conform the Appendix to the 2001 CSO Mortality Table, the following principles shall apply to use of such Appendix:

1. Paragraph 3(a)(ii)(b) of the Appendix. The net level reserve premium shall be based on the ultimate mortality rates in the 2001 CSO Mortality Table.
 2. Paragraph 5 of the Appendix. All calculations shall be made using the 2001 CSO Mortality Rate, and, if elected, the optimal minimum mortality standard for deficiency reserves stipulated in Section 5(A)(4) of this regulation. The value of “ $qx+k+t-1$ ” shall be the valuation mortality rate for deficiency reserves in policy year $k+t$, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.
 3. Paragraph 16 of the Appendix. The 2001 CSO Mortality Table shall be the minimum standard for basic reserves.
 4. Paragraph 17 of the Appendix. The 2001 CSO Mortality Table shall be the minimum standard for deficiency reserves. If select mortality rates are used, they shall be multiplied by X percent for durations in the first segment, subject to the conditions specified in Paragraph 17(c)(i) through (viii) of the Appendix. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.
 5. Paragraph 25(a) of the Appendix. The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.
 6. Paragraph 25(d) of the Appendix. The calculations specified in Paragraph 25 of the Appendix shall use the ultimate mortality rates in the 2001 CSO Mortality Table.
 7. Paragraph 26(d) of the Appendix. The calculations specified in Paragraph 26 of the Appendix shall use the ultimate mortality rates in the 2001 CSO Mortality Table.
 8. Paragraph 27(b) of the Appendix. The calculations specified in Paragraph 27 of the Appendix shall use the ultimate mortality rates in the 2001 CSO Mortality Table.
 9. Paragraph 29(a)(ii) of the Appendix. The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.
- (b) Nothing in this section shall be construed to expand the applicability of the Valuation of Life Insurance Policies Model Regulation to include life insurance policies exempted under Paragraph 3(a) of the Appendix.
- (6) Gender-Blended Tables.
- (a) For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (f) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection.

- (b) The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the National Association of Insurance Commissioners in December 2002. These blended tables are available from the Actuarial Section, Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243, or the internet by accessing the department's website at www.state.tn.us/commerce/.
- (c) It shall not, in and of itself, be a violation of Tennessee Code Annotated Section [to follow] for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

Authority: T.C.A. §§ 56-1-403, 56-7-401 and 56-2-301.

0780-1-52-.05 SEPARABILITY. If any provision of chapter 0780-1-52 or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

Authority: T.C.A. §§56-2-301 and 56-7-401.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2003.
(07-29)

THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 TENNESSEE STATE PARKS

The Department of Environment and Conservation will hold a public rulemaking hearing to consider the adoption and promulgation of amendments to Rule 0400-2-2-.14 Alcoholic Beverages, pursuant to Tennessee Code Annotated Section 4-5-101 et seq. and Section 11-1-108. 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 5th Floor Conference Room at the L & C Tower, 401 Church Street, Nashville, TN 37243-1531 at 9:30 A.M. CDT on September 17, 2003.

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 (10) days prior to September 17, 2003 (or the date such party intends to review such filings), to allow time to provide such aid or service. Contact the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

SUBSTANCE OF PROPOSED RULES**AMENDMENTS**

Rule 0400-2-2-.14 Alcoholic Beverages of Rule Chapter 0400-2-2 Public Use and Recreation is amended by deleting paragraphs (1) and (2) in their entirety and substituting the following so that, as amended, they shall read as follows:

- (1) Except in facilities that are licensed to sell alcoholic beverages, consumption of alcoholic beverages within state park areas that are open to the general public is forbidden.
- (2) Except in facilities that are licensed to sell alcoholic beverages, the public display of any container of alcoholic beverages is prohibited within state park areas that are open to the general public.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 4-5-206, and 11-1-108.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2003. (07-34)

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

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Yorkville Community Center, Yorkville, City Park, Highway 77, Yorkville, Tennessee on September 22, 2003, 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES**CHAPTER 1200-1-13
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION****AMENDMENTS**

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

<u>Site Number</u>	<u>Site Name</u>
Gibson County (27)	
27-501	B & H Transformer Yorkville, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of July, 2003. (07-25)

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

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at McKenzie City Hall, 2470 Cedar Street, McKenzie, Tennessee on September 23, 2003, 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-1-13
HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION**

AMENDMENTS

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

<u>Site Number</u>	<u>Site Name</u>
Carroll County (09)	
09-504	Gaines Manufacturing McKenzie, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of July, 2003. (07-26)

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.D.T. on the 16th day of September 2003.

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

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

SUBSTANCE OF PROPOSED RULE CHAPTER

Rules of the Department of Finance and administration are amended by adopting a new Chapter 1200-13-15 Rules of the TennCare Administrative Hearings which shall read as follows:

CHAPTER 1200-13-15
TENNCARE ADMINISTRATIVE HEARINGS AND OFFICIALS

TABLE OF CONTENTS

1200-13-15-.01 Definitions	1200-13-15-.15 Initial Order
1200-13-15-.02 Scope and Authority of an Administrative Hearing Official	1200-13-15-.16 The Final Order
1200-13-15-.03 Filing and Service of Pleadings and Other Materials	1200-13-15-.17 Default and Uncontested Proceedings
1200-13-15-.04 Time and Continuances	1200-13-15-.18 Record of Contested Case Proceedings
1200-13-15-.05 Commencement of a Contested Case Proceeding	1200-13-15-.19 Hearing Decision Evidence
1200-13-15-.06 Service of Notice of Hearing	1200-13-15-.20 Notice of Right to Appeal the Initial Order
1200-13-15-.07 Telephonic, Televised and alternate electronic methods for conducting hearings and Pre-Hearing Conferences	1200-13-15-.21 Notice of Right to Petition for Reconsideration of the Initial Order
1200-13-15-.08 Representation	1200-13-15-.22 Notice of Right to Appeal the Final Order
1200-13-15-.09 Pre-Hearing Motions	1200-13-15-.23 Notice of Right to Petition for Reconsideration of the Final Order
1200-13-15-.10 Discovery	1200-13-15-.24 Effect on the Final Order
1200-13-15-.11 Subpoena	1200-13-15-.25 Reconsideration Proceedings
1200-13-15-.12 Evidence in Hearings	1200-13-15-.26 Clerical Mistakes
1200-13-15-.13 Examination of Case File	1200-13-15-.27 Code of Judicial Conduct, Disqualification and Separation of Functions
1200-13-15-.14 Order of Proceedings	

1200-13-15-.01 DEFINITIONS.

- (1) Administrative Judge. An impartial employee or official of the Department of State Administrative Procedures Division who is licensed to practice law and authorized by law to conduct contested case proceedings pursuant to T.C.A. § 4-5-301.
- (2) Agency. The Bureau of TennCare.
- (3) Administrative Procedures Division (APD). The Department of State Administrative Procedures Division.
- (4) Appeal. The process of obtaining a contested case proceeding as a result of an Agency adverse action regarding matters affecting or relating to eligibility for TennCare Standard, or the process of obtaining review of an initial order by the Commissioner's Designee or judicial review of a final order.
- (5) Applicant. An individual who submits an application for TennCare Standard health coverage or an individual on whose behalf an application for TennCare Standard health coverage is submitted.
- (6) Burden of Proof. The "burden of proof" refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue. Generally, the party with the burden of proof presents his or her proof first at the hearing. The hearing officer or administrative judge makes all decisions regarding which party has the burden of proof on any issue, and determines the order of proceedings, taking into account the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand.

- (7) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare, the program administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (8) Commissioner. The chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located.
- (9) Commissioner's Designee. A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for stay or reconsideration of final orders.
- (10) Contested Case Proceeding. An administrative hearing proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.
- (11) Department. The Tennessee Department of Finance and Administration.
- (12) Findings of Fact. The factual findings following the administrative hearing, enumerated in the initial and/or final order, which include a concise and explicit statement of the underlying facts of record to support the findings.
- (13) Final Order. The initial order becomes a final order without further notice if not timely appealed, or if the initial order is appealed pursuant to T.C.A. § 4-5-315, the Commissioner or Commissioner's Designee may render a final order. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included.
- (14) Hearing. A contested case proceeding.
- (15) Hearing Officer. An impartial official of the Department of Finance and Administration or the Department of State Administrative Procedures Division who is designated by the Commissioner or his/her designated representative to conduct contested case administrative hearing proceedings. The person so designated shall have no direct involvement in the action under consideration prior to the filing of the appeal.
- (16) Initial Order. The decision of the hearing officer or administrative judge following a contested case administrative hearing proceeding. The initial order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It shall include a statement of any circumstances under which the initial order may, without further notice, become a final order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included.
- (17) Notice of Hearing. The pleading filed with the TennCare Administrative Hearing Unit or the Administrative Procedures Division by the agency upon receipt of an appeal. It shall contain a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307 (b).
- (18) Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (19) Person. Any individual.

- (20) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as, a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (21) TennCare Administrative Hearing Unit (TAHU). The office established within the Department of Finance and Administration to provide Hearing Officers for the purpose of conducting Administrative Hearings of appeals of agency actions regarding matters affecting eligibility under TennCare Standard.
- (22) TennCare Standard. TennCare Standard is that part of the TennCare Program which provides health coverage for Tennessee residents who are not eligible for Medicaid under Tennessee's Title XIX State Plan for Medical Assistance and is further defined in the Rules and Regulations of Tennessee Department of Finance And Administration Bureau of TennCare at Chapter 1200-13-14.
- (23) TRCP. The Tennessee Rules of Civil Procedure.
- (24) Uniform Administrative Procedures Act (UAPA). The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.

1200-13-15-.02 SCOPE AND AUTHORITY OF AN ADMINISTRATIVE HEARING OFFICIAL.

- (1) Tennessee's Medical Assistance Act and the Federal statutes of the Social Security Act (which includes Medical Assistance/Medicaid) and constitutional provisions require that there be provisions for appeals and fair hearings for applicants and recipients of assistance and services provided by the Department. The Tennessee Department of Finance and Administration and the Tennessee Department of Human Services have been designated responsibility for fulfillment of hearing provisions in the medical assistance programs. Medical assistance eligibility hearings shall meet the due process standards set forth in *Goldberg v. Kelly*, 397 US 245 (1970) and the standards set forth in the Federal Regulations.

Subject to any superseding federal or state law, these rules shall govern contested case proceedings conducted for the purpose of determining non-Medicaid TennCare Standard eligibility and related issues, and will be relied upon by hearing officers, administrative judges, and commissioner's designees conducting such proceedings. More specifically, these rules shall govern contested case proceedings determining TennCare Standard eligibility subsequent to a determination by TDHS that a person is not eligible for Medicaid. TennCare Medicaid eligibility appeals shall be conducted by the Department of Human Services pursuant to Chapter 1240-5 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

- (2) In any procedural situation that arises that is not specifically addressed by these rules, reference may be made to the following authorities in the order listed for guidance as to the proper procedure to follow: the Tennessee Uniform Administrative Procedures Act and the rules promulgated thereunder, and the Tennessee Rules of Civil Procedure.
- (3) The Commissioner has placed responsibility for conducting contested case proceedings in the TennCare Administrative Hearing Unit, and the Department of State Administrative Procedures Division. The hearing officer, or administrative judge is vested with full authority to conduct the contested case process in accordance with these rules, as applicable.

- (4) The hearing officer or administrative judge shall have the authority to do the following:
 - (a) Schedule and conduct the hearing;
 - (b) Administer oaths;
 - (c) Issue subpoenas;
 - (d) Rule upon offers of proof;
 - (e) Regulate the course of the hearing;
 - (f) Write an initial order stating his/her decision; and
 - (g) Rule on petitions for reconsideration or stays of the initial order issued by the same hearing officer or administrative judge.
- (5) The Commissioner has placed responsibility in the TennCare Commissioner's Designee Unit for conducting appeal reviews of Initial Orders and for ruling on petitions for reconsideration or stays of final orders issued by the commissioner's designee. The commissioner's designee is vested with full authority to conduct such proceedings in accordance with T.C.A. §§4-5-315, 4-5-316, 4-5-317, and these rules.

1200-13-15-.03 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings and any other materials required to be filed by a time certain as the result of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the TAHU or the APD, as designated, within the required time period.
- (2) Upon the involvement of either the TAHU or the APD in any contested case, all pleadings and other materials required to be filed or submitted prior to the contested case hearing shall be filed with the designated office, where they will be stamped with the date and hour of their receipt.
- (3) Petitions for review of an initial order and for reconsideration or stay of a final order may be filed with the agency or either the TAHU or the APD, as designated in the order.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1200-13-15-.10.
- (5) Copies of any and all materials filed with the agency or the TAHU or the APD in a contested case shall also be served upon all parties, or upon their counsel, and shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or equivalent carrier or by hand delivery.

1200-13-15-.04 TIME AND CONTINUANCES.

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and

legal holidays shall be excluded in the computation. The Notice of Hearing will provide notice of this provision or inform the applicants/enrollees of the specific calendar dates by which certain actions must be taken.

- (2) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the hearing officer or administrative judge or commissioner's designee as soon as practicable.
- (3) Any case may be continued by mutual consent of the parties when approved by the hearing officer or administrative judge or commissioner's designee.
- (4) If an enrollee or applicant requests a continuance, any mandatory deadlines for conducting hearings and issuance of initial orders by a hearing officer or an administrative judge shall be extended by like period of time. Calculation of the 90-day timeframe may be adjusted only to the extent that any delays are attributable to the beneficiary. The beneficiary should only be charged with the amount of delay occasioned by the beneficiary's acts or omissions, and any other delays should be deemed to be the responsibility of TennCare. The TennCare Bureau is responsible for keeping track of the timeframes.

1200-13-15-.05 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

- (1) Commencement of Action. A contested case proceeding may be commenced by original agency action, by appeal from an agency action, by request for hearing, by an affected person, or by any other lawful procedure.
- (2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the agency, which notice shall comply with T.C.A. § 4-5-307(b).
- (3) Supplemented Notice. In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later writings.
- (4) Filing of Documents. When a contested case is commenced, the agency shall provide the TAHU or the APD with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency concerning that particular case. Legible copies may be filed in lieu of originals.
- (5) Answer. The party may respond to the matters set out in the notice or other original pleading by filing a written answer with the agency in which the party may:
 - (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Agency may proceed.
 - (b) Object on the basis of lack of jurisdiction over the subject matter.
 - (c) Object on the basis of lack of jurisdiction over the person.
 - (d) Object on the basis of insufficiency of the notice.
 - (e) Object on the basis of insufficiency of service of the notice.

- (f) Object on the basis of failure to join an indispensable party.
 - (g) Generally deny all the allegations contained in the notice or state that he is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges.
 - (h) Admit in part or deny in part allegations in the notice and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues.
 - (i) Assert any available defense.
- (6) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing officer or administrative judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory or regulatory basis for denial or termination of enrollment without original service and running of times applicable to service of the original notice. The hearing officer or administrative judge shall not grant a continuance to amend the notice or original pleading if such would prejudice an applicant's or an enrollee's right to a hearing and initial order within any mandatory timeframes.
- (7) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing officer or administrative judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing officer or administrative judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments. However, when the applicant/enrollee is not represented by counsel, the burden cannot be put on such individuals to object to the State's trying of cases with proof and legal authorities not set out in the pleadings.

1200-13-15-.06 SERVICE OF NOTICE OF HEARING.

In any case in which an applicant or an enrollee has requested a hearing from the agency, a copy of the notice of hearing shall be delivered to the party by certified or registered mail, postage prepaid or personal service, at the address required to be kept current with the agency by T.C.A. §§ 71-5-106(l) and 110(c)(1) and the address provided with the request for hearing, if different from the address on file with the agency. However, TennCare must use the best address known to it, whether provided directly by the applicant/enrollee, or indirectly.

- (1) In the event of a motion for default where there is no indication of actual service on a party, the following circumstances will be taken into account in determining whether to grant the default:
 - (a) Whether and to what extent actual service is practicable in any given case;
 - (b) What attempts were made to get in contact with the party by telephone or otherwise; and
 - (c) Whether the agency has actual knowledge or reason to know that the party may be located elsewhere than the address to which the notice was mailed.

1200-13-15-.07 TELEPHONIC, TELEVISED AND ALTERNATE ELECTRONIC METHODS FOR CONDUCTING HEARINGS AND PREHEARING CONFERENCES.

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

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

1200-13-15-.08 REPRESENTATION.

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

1200-13-15-.09 PRE-HEARING MOTIONS.

- (1) Scope — This rule applies to all motions made prior to a hearing on the merits of a contested case.
- (2) Motions — Parties to a contested case are encouraged to resolve matters on an informal basis; however, if efforts at informal resolutions fail, any party may request relief in the form of a motion by serving a copy on all parties and, if a hearing officer or administrative judge is conducting the contested case, by filing the motion with the office in which the hearing officer or administrative judge resides. Any such motion shall set forth a request for all relief sought, and shall set forth grounds which entitle the moving party to relief.
- (3) Time Limits; Argument — A party may request oral argument on a motion. However, parties are encouraged to submit a brief memorandum of law with the motion. Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the hearing officer or administrative judge.
- (4) Oral Argument — If oral argument is requested, the pre-hearing motion may be argued by telephone conference call.
- (5) Affidavits; Briefs and Supporting Statements
 - (a) Motions and responses thereto may be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses thereto may be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits should set forth only facts which are admissible in evidence under *T.C.A. §4—5—313*, and to which the affiants are competent to testify. Such affidavits must be delivered to the opposing party no less than ten (10) days prior to a hearing in the form provided in *T.C.A. §4—5—313*, so as to afford the opponent the opportunity to question or refute any testimony or evidence, including the opportunity to confront and cross examine adverse witnesses. Unless the opposing party within seven (7) days after delivery delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto. "Delivery" for purposes of affidavits means actual receipt.
 - (b) In the discretion of the hearing officer or administrative judge, a counsel for the TennCare Bureau may be required to submit briefs or supporting statements pursuant to a schedule established by the hearing officer or administrative judge.
- (6) Disposition of Motions; Drafting the Order
 - (a) When a prehearing motion has been made in writing or orally, the hearing officer or administrative judge shall render a decision on the motion by issuing an order.
 - (b) The hearing officer or administrative judge after signing any order shall cause the order to be served forthwith upon the parties. Nothing in this rule shall preclude the right to seek interlocutory judicial review under *T.C.A. §4—5—322(a)*.

1200-13-15-.10 DISCOVERY.

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

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

1200-13-15-.11 SUBPOENA.

The hearing officer or administrative judge, at the request of any party, shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas.

1200-13-15-.12 EVIDENCE IN HEARINGS.

In all agency hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the agency, or at the motion of any party, witnesses may be excluded prior to their testimony. The standard for admissibility of evidence, including admissibility of affidavits, is set forth at *T.C.A. §4—5—313*.

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

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

1200-13-15-.14 ORDER OF PROCEEDINGS.

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

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

1200-13-15-.15 INITIAL ORDER.

- (1) The initial order issued by the hearing officer or administrative judge shall be based exclusively on evidence introduced at the administrative hearing and shall contain the elements set forth at rule 1200-13-15-.01.
- (2) The initial order shall be served on all parties of record.
- (3) The initial order shall include a statement of the available procedures and time limits for seeking reconsideration and/or appeal to the Commissioner.

1200-13-15-.16 THE FINAL ORDER.

- (1) The final order shall be issued pursuant to the authority of the Commissioner of the Department of Finance and Administration or his/her designated representative. The final order shall be binding upon all parties unless it is stayed, reversed or otherwise set aside through judicial review.
- (2) The final order in a contested case shall be in writing and shall be served on all parties of record.
- (3) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.

1200-13-15-.17 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.

- (a) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of a contested case proceeding after due notice thereof may be cause for holding such party in default pursuant to T.C.A. § 4-5-309. Failure to comply with any lawful order of the hearing officer or administrative judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case proceeding and thereby be cause for a holding of default.
 - (b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.
 - (c) The hearing officer or administrative judge determines whether the service of notice is sufficient as a matter of law, according to rule 1200-13-15-.06.
 - (d) If the notice is held to be adequate, the hearing officer or administrative judge shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1200-13-15-.06. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned if the absent party has the burden of proof or conducted without the participation of the absent party if the moving party bears the burden of proof.
 - (e) The hearing officer or administrative judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after service of such notice of default, may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing officer or administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. §4—5—317.
- (2) Effect of Entry of Default.
- (a) Upon entry into the record of the default of an applicant or an enrollee at a contested case proceeding, the appeal shall be dismissed as to all issues on which the applicant or enrollee bears the burden of proof.
 - (b) Upon entry into the record of the default of the applicant or enrollee at a contested case hearing, the matter shall be tried as uncontested as to all issues on which the agency bears the burden of proof.
- (3) Uncontested Proceeding. When the matter is tried as uncontested, the agency has the burden of establishing its allegations by a preponderance of the evidence presented.

1200-13-15-.18 RECORD OF CONTESTED CASE PROCEEDINGS.

The official record of each contested case shall be maintained as required by 4-5-319. As particularly required by 4-5-319, a record (which may consist of a tape or similar electronic recording) shall be made of all oral contested case proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be transcribed by the agency at its expense. If the applicant/enrollee appeals the initial order, the record will be transcribed at agency expense. This record shall be maintained for a period of time, not less than three years.

1200-13-15-.19 HEARING DECISION EVIDENCE.

Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing.

1200-13-15-.20 NOTICE OF RIGHT TO APPEAL THE INITIAL ORDER.

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

1200-13-15-.21 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE INITIAL ORDER.

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

1200-13-15-.22 NOTICE OF RIGHT TO SEEK JUDICIAL REVIEW OF THE FINAL ORDER.

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

1200-13-15-.23 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

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

1200-13-15-.24 EFFECT ON THE FINAL ORDER.

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

1200-13-15-.25 RECONSIDERATION PROCEEDINGS.

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

1200-13-15-.26 CLERICAL MISTAKES.

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

1200-13-15-.27 CODE OF JUDICIAL CONDUCT, DISQUALIFICATION AND SEPARATION OF FUNCTIONS

Hearing officers and administrative judges shall comply with the requirements concerning the code of judicial conduct set out in the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies at Chapter 1360—4—1—.20 and the requirements of T.C.A. §§ 4-5-302 and 4-5-303 concerning disqualification and separation of functions. Commissioner's designees shall also comply with the requirements of T.C.A. §§ 4-5-302 and 4-5-303.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2003.
(07-33)

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

There will be a hearing before the Division of Emergency Medical Services to consider the promulgation of amendments of rules pursuant to T.C.A. §§ 68-140-504, 68-140-506, 68-140-508, and 68-140-517. 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, Ground Floor, located at 425 Fifth Avenue North, Nashville, Tennessee at 10:00 a.m., Central Daylight Time, on September 18, 2003.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Health, Division of Emergency Medical 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 plans to review such filings, to allow time for the Division of Emergency Medical Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the department's ADA coordinator at the Andrew Johnson Tower, 11th Floor, 710 James Robertson Parkway, Nashville, TN 37243-0675, 615-741-6350.

For a copy of the entire text of the notice of rulemaking, contact Joseph B. Phillips, Director, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

SUBSTANCE OF PROPOSED RULES

NEW RULES

1200-12-3 RESPONSE AGENCIES FOR CARDIAC EMERGENCIES

- (1) A county, local government or emergency communications district shall coordinate the response of public safety agencies in its jurisdiction for the purpose of deploying automated external defibrillators to victims of sudden cardiac arrest. Such programs shall be coordinated as a part of the emergency medical services system by the local dispatch entity in addition to the dispatch of ambulances and emergency medical first responders. Each emergency services agency that responds when dispatched to cardiac emergencies shall:
 - (a) Be a state-chartered or legally recognized organization or service sanctioned to perform emergency management, public safety, fire fighting, rescue, ambulance, or medical and health care functions and which provides services twenty-four (24) hours a day, seven (7) days a week.
 - (b) Provide a responding vehicle equipped with an automated external defibrillator that is appropriately supplied and maintained in accordance with the manufacturer's standards and in compliance with the provisions of T.C.A Title 68, Chapter 140, Part 7. Such vehicles may display placards or markings indicating that the vehicle is equipped with an automated external defibrillator.
 - (c) Provide two-way radio communications with all public safety personnel who may respond to such incidents as part of the coordinated community response.
 - (d) Include on each response team a person who has completed an approved course of instruction in cardiopulmonary resuscitation and the use of an automated external defibrillator, as recog-

nized by the Tennessee Emergency Medical Services Board, or who is certified as an Emergency Medical First Responder, or licensed as an Emergency Medical Technician, EMT- Paramedic, Physician or Registered Nurse in Tennessee.

- (e) Maintain medical control of the response program under the direction of a physician licensed to practice medicine in the State of Tennessee.
- (2) Each participating entity shall develop and maintain a memorandum of understanding or agreement of coordination within the service area with the primary provider of emergency ambulance services and all responding agencies. Such agreement shall include a roster of response personnel participating in the program, and it shall provide policies and procedures for the following:
- (a) Identification of vehicles to be operated in the program, including unit identifiers and the area in which vehicles will be operated;
 - (b) Restricting the use and dispatch of the participating entity to those emergencies which are reasonably believed to involve sudden cardiac arrests, and ensuring that the participating entity will be the service area's primary responder in the event of such cardiac emergencies;
 - (c) Radio communications procedures between response vehicles, dispatch agencies, and emergency medical services;
 - (d) Coordination of responsibilities of the individual on-scene responders according to their respective levels of training;
 - (e) Medical direction, protocols and/or standing orders by the authority of the ambulance service medical director;
 - (f) Exchange and recovery of required minimum equipment and supplies and additional items adopted for local use; and,
 - (g) Exchange of patient information, records and reports, and quality assurance procedures.
- (3) Each entity shall assure that the agencies maintain minimum liability coverage for vehicles used for response which are set forth in T.C.A. § 29-20-403.
- (4) Provisions governing a coordinated community response specific to instances involving or reasonably believed to involve sudden cardiac arrest shall in no event violate the terms of rule 1200-12-1-.16, which regulates emergency medical first responders.

Authority: T.C.A. §§4-5-202, 4-5-203, 4-5-204; 68-140-504, 68-140-506, 68-140-507; 68-140-703, 68-140-704, and 68-140-705.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2003.
(07-35)

**THE DEPARTMENT OF HEALTH - 1200
TENNESSEE MEDICAL LABORATORY BOARD
DIVISION OF HEALTH RELATED BOARDS**

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, 68-29-105, 68-29-111, 68-29-116, 68-29-129, and Public Chapter 173 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 Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 1st day of October, 2003.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-6-1-.20 Qualifications and Duties of the Medical Laboratory Director, is amended by adding the following language as new paragraph (4) and renumbering the remaining paragraph accordingly:

- (4) Oral Pathology Laboratory Director
 - (a) A dentist may serve as a medical laboratory director limited to the specialty of oral pathology without obtaining medical laboratory licensure if
 - 1. The dentist has a current, unrestricted, and unencumbered license to practice dentistry in Tennessee; and
 - 2. The dentist is currently certified by the American Board of Oral and Maxillofacial Pathology; and
 - 3. The dentist is currently certified in oral pathology by the Tennessee Board of Dentistry.
 - (b) Otherwise, to qualify as a medical laboratory director the individual must meet the minimum licensure requirements stated in Rule 1200-6-1-.20.
 - (c) Oral pathology is defined as that specialty branch of dentistry and pathology which deals with the nature and diagnosis of the diseases affecting the oral cavity and adjacent related structures.

- (d) Oral pathology laboratory directors shall limit their responsibilities to only those specimens obtained from the oral cavity and adjacent related structures.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, 68-29-105, 68-29-111, 68-29-116, 68-29-129, and Public Chapter 173 of the Public Acts of 2003.

Rule 1200-6-3-.01 Definitions, is amended by adding the following language as new paragraph (25) and renumbering the remaining paragraphs accordingly:

- (25) Oral Pathology – That specialty branch of dentistry and pathology which deals with the nature and diagnosis of the diseases affecting the oral cavity and adjacent related structures.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-104, 68-29-105, 68-29-111, 68-29-116, 68-29-129, and Public Chapter 173 of the Public Acts of 2003.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of July, 2003. (07-16)

**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, Tuesday, September 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 of the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731.

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

**CHAPTER 1240-1-54
CHILD CARE
FAMILIES FIRST PROGRAM**

AMENDMENTS

Rule 1240-1-54-.02 Transitional Child Care Coverage, is amended by deleting subparagraph (a) of paragraph (1) in the entirety, and by substituting the following new language, so that, as amended, paragraph (1), subparagraph (a) through (c) shall read:

- (1) Transitional Child Care (TCC) will be provided for a total of eighteen (18) months after Families First case closure. TCC will be provided when:
 - (a) the caretaker has a minimum of forty (40) hours per week in allowable activities, as defined by policy; and
 - (b) the individual's gross wages equal the current federal minimum wage when averaged over the number of hours worked per week; and
 - (c) total family income is below the level established in State transitional child care policies.
 1. This income level will be set at sixty (60) percent of the state median income or higher. TCC will be provided to such families regardless of the reason for case closure, except that TCC will not be provided for cases closed due to noncooperation with child support. In addition, TCC will be provided even when an otherwise eligible family has not received Families First for three out of the prior six months.

Authority: TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-154(b)(1), 71-3-158; and 42 USCA § 1315(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2003.
(07-28)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-610, 48-101-618, 48-101-630, 48-248-401, 48-248-404, 48-248-501, 48-248-603, 63-6-101, 63-6-214, and Public Chapter 45 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 Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 8:15 a.m. (CDT) on the 16th day of September, 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 0880-2-.20 Medical Professional Corporations and Medical Professional Limited Liability Companies, is amended by adding the following language as new part (1) (b) 8., and is further amended by deleting part (1) (c) 1. but not its subparts and substituting instead the following language, and is further amended by deleting part (1) (c) 2. in its entirety and substituting instead the following language, and is further amended by adding the following language as new part (2) (b) 8., and is further amended by deleting part (2) (c) 1. but not its subparts and substituting instead the following language, and is further amended by deleting part (2) (c) 2. in its entirety and substituting instead the following language, and is further amended by adding the following language as new part (2) (d) 3. and renumbering the remaining parts accordingly, so that as amended, the new part (1) (b) 8., the new part (1) (c) 1. but not its subparts, the new part (1) (c) 2., the new part (2) (b) 8., the new part (2) (c) 1. but not its subparts, the new part (2) (c) 2., and the part (2) (d) 3. shall read:

- (1) (b) 8. A foreign or domestic chiropractic general partnership, chiropractic professional corporation or chiropractic professional limited liability company doing business in Tennessee in which all shareholders/members are either chiropractors licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 and/or physicians 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 chiropractors and/or physicians.
- (1) (c) 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
- (1) (c) 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a MPC.

- (2) (b) 8. A foreign or domestic chiropractic general partnership, chiropractic professional corporation or chiropractic professional limited liability company doing business in Tennessee in which all shareholders/members are either chiropractors licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 and/or physicians 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 chiropractors and/or physicians.
- (2) (c) 1. All, except the following managers, must be persons who are eligible to form or become members of a medical professional limited liability company as limited by T.C.A. § 48-248-401 (d) (1), (2), and/or (3) and subparagraph (2) (b) of this rule:
- (2) (c) 2. Only persons who are eligible to form or become members of a medical professional limited liability company as limited by T.C.A. § 48-248-401 (d) (1), (2), and/or (3) and subparagraph (2) (b) of this rule shall be allowed to serve on the Board of Governors of a M PLLC.
- (2) (d) 3. Engaging in, or allowing another physician member, officer, manager, or governor, while acting on behalf of the M PLLC, to engage in, medical 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, Sections 63-6-214 (b) (1) or 63-9-111 (b) (1).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-610, 48-101-618, 48-101-630, 48-248-401, 48-248-404, 48-248-501, 48-248-603, 63-6-101, 63-6-214, and Public Chapter 45 of the Public Acts of 2003.

The notice of rulemaking set out herein was properly filed in the Department of State on the 3rd day of July, 2003. (07-09)

THE TENNESSEE REGULATORY AUTHORITY- 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of amendments of rules pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 1 p.m. (central) on the 22nd day of September, 2003.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Regulatory Authority to discuss any auxiliary aids of 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 the filings), to allow time for the Tennessee Regulatory Authority to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Regulatory Authority's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505 and 615/741-2904, extension 138.

For a copy of this notice, contact: Sharla Dillon, Docket Manager, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37343, (615) 741-2904, extension 136.

SUBSTANCE OF PROPOSED RULES**AMENDMENTS**

Subparagraph (2) of Subparagraph (d) of Paragraph (2) of Rule 1220-4-2-.56, Verification of Orders for Changes for Local and Long Distance Carriers, is amended by deleting the subparagraph and by substituting instead the following language:

2. A notification letter, pre-approved by the Authority, shall be sent by the current provider of telecommunications service to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter unless the customer selects another telecommunications service provider. The notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part, as long as it fully complies with this rule. The Authority may waive the thirty (30) day notice requirement and/or the company logo or name requirements of this part for good cause shown.

Authority: T.C.A. §§ 4-5-201 et. seq., 65-2-102, 65-2-106, 65-4-101, 65-4-104, 65-4-123, 65-4-125 and 47 U.S.C. § 258.

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of July, 2003. (07-21)

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CERTIFICATE OF APPROVAL

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


RILEY C. DARNELL
Secretary of State