

# TAAAR



**September 15, 2003**  
**Volume 29, Number 9**

**RILEY C. DARNELL**  
Secretary of State

Division of Publications  
8th Floor, Snodgrass Tower  
312 8th Avenue North  
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Department of State, Authorization No. 305197, 320 copies, September 2003. This public document was promulgated at a cost of \$ 4.41 per copy.

## PREFACE

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

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

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

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

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

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

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

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## **ANNOUNCEMENTS**

### **DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**

#### **ANNOUNCEMENT OF FORMULA RATE OF INTEREST**

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

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 October 2003 is 9.37 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 5.37 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 August 2003. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-02	Aug 5, 2003	<b>0400 Environment and Conservation</b> Bureau of Environment Division of Water Supply	Rulemaking Hearing Rules	New Rules	Chapter 1200-5-8 Water Registration Requirements 1200-5-8-.01 Authority 1200-5-8-.02 Purpose 1200-5-8-.03 Scope 1200-5-8-.04 Definitions 1200-5-8-.05 Registration Requirement 1200-5-8-.06 Ownership/Operational Rights 1200-5-8.007 Measurement Methods and Standards 1200-5-8-.08 Classification of Water Uses 1200-5-8-.09 Points of Withdrawal and Return Location/Source Identification 1200-5-8-.10 Record Maintenance 1200-5-8-.11 Change of Person Responsible for Withdrawal 1200-5-8-.12 Compliance and Civil Penalties 1200-5-8-.13 Confidentiality of Data	David Draughon Water Supply 6th Fl L&C Twr Nashville TN 37243-1549 615-532-0152	Oct 19, 2003
08-05	Aug 5, 2003	<b>0400 Environment and Conservation</b> Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rule	Amendment	Chapter 1200-3-27 Nitrogen Oxides 1200-3-27-.06 Nox Budget Trading Program For State Implementation PLANS (40 CFR 96)	Mr. John Patton Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville, TN 37243-1531 (615) 532-0604	Oct 19, 2003
08-10	Aug 13, 2003	<b>1200 Health</b> Bureau of Health Services	Public Necessity Rules	New Rules	Chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program 1200-20-11-.01 Introduction 1200-20-11-.02 Definitions 1200-20-11-.03 Necessity of License and Professional Credentials 1200-20-11-.04 Eligibility 1200-20-11-.05 Application Review, Approval, Denial 1200-20-11-.06 Program Requirements 1200-20-11-.07 Noncompliance 1200-20-11-.08 Waiver of Responsibility	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	August 13, 2003 through Jan 25, 2004
08-11	Aug 14, 2003	<b>1540 Higher Education Commission</b>	Proposed Rules	New Rules	Chapter 1540-1-9 Immunizations for Newly Matriculating Students 1540-1-9-.01 Definitions 1540-1-9-.02 Notice of Information 1540-1-9-.03 Waiver	Will Bums Suite 1900 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243-0830 (615) 741-7571	Dec 29, 2003
08-15	Aug 18, 2003	<b>1730 Veterinary Medical Examiners</b>	Rulemaking Hearing Rules	Amendments	Chapter 1730-1 General Rules Governing Veterinarians 1730-1-.02 Scope of Practice 1730-1-.06, Fees	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N	Nov 1, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-15, cont.					<p>Chapter 1730-2 General Rules Governing Veterinary Facilities 1730-2-.08 Surgery</p> <p>Chapter 1730-3 General Rules Governing Veterinary Medical Technicians 1730-3-.06 Fees</p> <p>Chapter 1730-4 General Rules Governing Certified Animal Control Agencies 1730-4-.06 Fees</p> <p>Chapter 1730-5 General Rules Governing Certified Animal Euthanasia Technicians 1730-5-.06 Fees</p> <p>1730-2-.16 Hospitalization</p>	<p>Nashville, TN 37247-0120 615-741-1611</p>	
08-16	Aug 18, 2003	<b>0460 Dentistry</b>	Rulemaking Hearing Rules	New Rule Amendments	<p>Chapter 0460-1 General Rules 0460-1-.02 Fees 0460-1-.05 Continuing Education and C.P.R.,</p> <p>Chapter 0460-2 Rules Governing the Practice of Dentistry 0460-2-.02 Dual Degree Licensure Process 0460-2-.03 Educational Licensure Process, 0460-2-.04 Licensure Exemption Process 0460-2-.05 Examination 0460-2-.06 Specialty Certification 0460-2-.08 Licensure Renewal</p> <p>Chapter 0460-3 Rules Governing Practice of Dental Hygienists 0460-3-.04 Licensure Exemption Process 0460-3-.05 Examination 0460-3-.07 Licensure Renewal</p> <p>Chapter 0460-4 Rules Governing the Practice of Dental Assistants 0460-4-.06 Registration Renewal</p>	<p>Nick Aemisegger OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611</p>	Nov 1, 2003
08-18	Aug 20, 2003	<b>1240 Human Services</b> Family Assistance Division	Rulemaking Hearing Rules	Amendments	<p>Chapter 1240-1-50 Standard of Need/Income 1240-1-50-.20 Standard Of Need/Income</p>	<p>Phyllis Simpson 15<sup>th</sup> Fl Citizens Pl Bldg Nashville, TN 37248 (615) 313-2266</p>	Nov 3, 2003

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-22	Aug 25, 2003	1200 Health Medical Laboratory Board	Rulemaking Hearing Rules	Amendments	<p>Chapter 1200-6-1 General Rules Governing Medical Laboratory Personnel</p> <p>1200-6-1-01 Definitions</p> <p>1200-6-1-02 Scope of Practice</p> <p>1200-6-1-03 Necessity of Licensure</p> <p>1200-6-1-05 Procedures for Personnel Licensure</p> <p>1200-6-1-06 Fees</p> <p>1200-6-1-08 Examinations</p> <p>1200-6-1-09 Renewal of License</p> <p>1200-6-1-14 Trainee Permits</p> <p>1200-6-1-16 Replacement License</p> <p>1200-6-1-17 Change of Address and/or Name</p> <p>1200-6-1-19 Board Meetings, Officers, Consultants, and Declaratory Orders</p> <p>1200-6-1-20 Qualifications and Duties of the Medical Laboratory Director</p> <p>1200-6-1-21 Qualifications and Duties of the Medical Laboratory Supervisor</p> <p>1200-6-1-22 Qualifications, Responsibilities, and Duties of Testing Personnel</p> <p>1200-6-1-23 Qualifications and Duties of the Cytology General Supervisor</p> <p>1200-6-1-24 Qualifications and Duties of the Cytotechnologist</p> <p>1200-6-1-25 Personnel Exempt from Licensure</p> <p>Chapter 1200-6-3 General Rules Governing Medical Laboratories</p> <p>1200-6-3-07 Participation in Proficiency Testing</p> <p>1200-6-3-15 Special Regulations for ASTC, Blood Donor Centers, and Plasmapheresis Centers</p>	Robert J. Kraemer Health OGC 26 <sup>th</sup> Fl TN Twr 312 8 <sup>th</sup> Ave N Nashville, TN 37247-0120 615-741-1611	Nov 18, 2003
08-30	Aug 29, 2003	1200 Health Bureau of Health Licensure and Regulation Division of Emergency Medical Services	Rulemaking Hearing Rules	Amendments	<p>Chapter 1200-12-1 General Rules</p> <p>1200-12-1-04 Emergency Medical Technician (EMT)</p> <p>1200-12-1-06 Schedule of Fees</p>	Ernest Sykes, Jr. Health OGC 26 <sup>th</sup> Fl TN Twr 312 8 <sup>th</sup> Ave N Nashville TN 37247-0120 615-741-1611	Nov 12, 2003
08-31	Aug 29, 2003	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendments	<p>Chapter 1050-2 General Rules and Regulations Governing the Practice of Osteopathy</p> <p>1050-2-.08 Licensure Retirement and Reactivation</p>	Robert J. Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N	Nov 12, 2003



SEQ	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-31, cont.					<p>Chapter 1050-3  <i>General Rules and Regulations Governing Utilization of X-Ray Operators</i>            in Osteopathic Physicians' Offices            1050-3-.02 Scope of Practice            1050-3-.04 Qualifications for Full and Limited Certification            1050-3-.05 Obtaining and Upgrading Full and Limited Certification            1050-3-.07 Educational Course Approval and Curriculum for Limited Certification            1050-3-.08 Examination for Certification</p> <p>1050-2-.19 Medical Professional Corporations and Medical Professional Limited Liability Companies</p> <p>1050-4-1-.01 Purpose -            1050-4-1-.02 Definitions -            1050-4-1-.03 Coverage and Scope of Act -            1050-4-1-.04 Ownership of M.P.C. Shares-            1050-4-1-.05 Requirements as to Form of Corporate Charter-            1050-4-1-.06 Filing of Charter -            1050-4-1-.07 Corporate Practice Limitations -            1050-4-1-.08 Practice Beyond Scope of Charter -            1050-4-1-.09 Prohibition on Physician Combining with Other Professions -            1050-4-1-.10 Ethical Prohibition on Physicians' Ownership of a Non-M.P.C. -            1050-4-1-.11 Corporate Name -            1050-4-1-.12 Officers and Directors-            1050-4-1-.13 Requirements as to Form of Stock Certificate -            1050-4-1-.14 Offering of M.P.C. Shares            Prohibited-            1050-4-1-.15 Regulation of M.P.C. Shares by the Board-            1050-4-1-.16 Filing of Annual Statement of Qualifications -            1050-4-1-.17 Termination of M.P.C. Status -            1050-4-2-.01 Purpose-            1050-4-2-.02 Definitions -            1050-4-2-.03 Coverage and Scope of Rules -            1050-4-2-.04 Membership in MPLLC'S-            1050-4-2-.05 Persons Permitted to be Managers or Governors -            1050-4-2-.06 Dissolution -            1050-4-2-.07 Foreign MPLLC'S -</p>	615-741-1611	

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-35	Aug 29, 2003	<b>0940</b> <b>Mental Health and Developmental Disabilities</b> Office of Licensure	Proposed rules	Amendments	0940-5-1-.01 Definition Of General Terms Used In All Rules 0940-5-1-.15 Definitions for the Distinct Category of Personal Support Services Agencies 0940-5-3-.26 Application of Rules for Personal Support Services Agencies	Cynthia C. Tyler Mental Health and Developmental Disabilities 5th Fl Cordell Hull Bid 425 5th Ave N Nashville TN 37243 (615) 532-6520	Dec 29, 2003
08-36	Aug 29, 2003	<b>0940</b> <b>Mental Health and Developmental Disabilities</b> Office of Licensure	Proposed Rules	New Rules	<i>Chapter 0940-5-36</i> <i>Minimum Program Requirements for Personal Support Services</i> 0940-5-36-.01 Scope 0940-5-36-.02 Policies and Procedures 0940-5-36-.03 Personnel Requirements 0940-5-36-.04 Standardized Training and Continuing Education Requirements 0940-5-36-.05 Service Recipient Record Requirements	Cynthia C. Tyler Mental Health and Developmental Disabilities 5th Fl Cordell Hull Bid 425 5th Ave N Nashville TN 37243 (615) 532-6520	Dec 29, 2003
08-37	Aug 20, 2003	<b>1200</b> <b>Health</b> Health Services Administration Communicable and Environmental Disease Services	Proposed Rules	Amendments	Chapter 1200-14-1 Communicable Diseases 1200-14-1-.02, Notifiable Diseases	Richard F. Russell, Esq. Deputy General Counsel Office of General Counsel 26 <sup>th</sup> Floor, William R. Snodgrass Tennessee Tower 312 Eighth Avenue North Nashville, Tennessee 37247-0120 (615) 741-1611	Dec 29, 2003

**DEPARTMENT OF HEALTH - 1200  
BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS  
DIVISION OF HEALTH RELATED BOARDS**

**NOTICE OF WITHDRAWAL OF RULES**

The Board of Alcohol and drug Abuse Counselors hereby gives notice of withdrawal of amendment to rules 1200-30-1-.04, 1200-30-1-.05, and 1200-30-1-.08, filed with the Department of State on the 16th day of June, 2003 to have become effective on the 1st day of September, 2003.

Albert Richardson, Jr., Chair  
Board of Alcohol and Drug Abuse Counselors

The notice of withdrawal of rules was properly filed in the Department of State on the 22nd day of August, 2003. (08-19)

**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 existing area designed for outpatient surgery as included in the

NAME AND ADDRESS	DESCRIPTION
<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. \$ 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. \$ 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. \$ 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. \$ 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. \$ 18,500.00</p>
<p>Scott County Hospital Highway 27 Oneida (Scott Co.), TN 37841 Jerry W. Taylor – (615)—726-1200 CN0307-053</p>	<p>The initiation of mobile lithotripsy services for two days per week. \$ 615,000.00</p>

## NAME AND ADDRESS

Hartsville Convalescent Center, Inc.  
649 McMurry Blvd. (Current – No # assigned)  
Hartsville (Trousdale Co.), TN 37074  
CN0307-054

## DESCRIPTION

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)
- 1200 - Department of Health - Water Quality Control Board - Division of Water Pollution Control - Emergency rules concerning criterion for nutrients, chapter 1200-4-3 General Water Quality Criteria, 8 T.A.R. (August 15, 2003) - Filed July 31, 2003; effective through January 12, 2004. (07-32)

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## **PROPOSED RULES**

### **THE TENNESSEE DEPARTMENT OF HEALTH - 1200 BUREAU OF HEALTH SERVICES ADMINISTRATION COMMUNICABLE AND ENVIRONMENTAL DISEASE SERVICES**

#### **CHAPTER 1200-14-1 COMMUNICABLE DISEASES**

Presented herein are proposed amendments of the Department of Health, Bureau of Health Services Administration, Communicable and Environmental Disease Services, submitted pursuant to Tennessee Code Annotated § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Bureau of Health Services Administration, Communicable and Environmental Disease Services, to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Office of Communicable and Environmental Disease Services on the 4th Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee, 37247, and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee, 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact:

Tracy McCauley, R.N.  
Communicable and Environmental Disease Services  
Fourth Floor, Cordell Hull Building  
425 Fifth Avenue North  
Nashville, Tennessee 37247-3901  
(615) 741-7247

The text of the proposed amendments is as follows:

#### **AMENDMENTS**

Rule 1200-14-1-.02, Notifiable Diseases, paragraph (1), subparagraph (n), is amended by deleting part 6. in its entirety.

**Authority:** *T.C.A. §§4-5-202 and 68-5-104(a).*

Rule 1200-14-1-.02, Notifiable Diseases, paragraph (1), is amended by deleting the existing language contained in subparagraph (z) and substituting instead the following language:

(z) Lead Levels (blood)+

**Authority:** T.C.A. §§4-5-202 and 68-5-104(a).

Rule 1200-14-1-.02, Notifiable Diseases, paragraph (1), is amended by inserting a new subparagraph (mm) and renumbering the existing subparagraph (mm), Psittacosis, as (nn) and further renumbering subsequent subparagraphs accordingly. New subparagraph (mm) shall read as follows:

(mm) Prion disease (Creutzfeldt Jakob Disease, variant CJD, other)

**Authority:** T.C.A. §§4-5-202 and 68-5-104(a).

Rule 1200-14-1-.02, Notifiable Diseases, paragraph (1), is amended by inserting a new, appropriately numbered subparagraph ( ) and renumbering the remaining subparagraphs accordingly. The new, appropriately numbered subparagraph shall read as follows:

( ) West Nile virus infections\*

**Authority:** T.C.A. §§4-5-202 and 68-5-104(a).

Rule 1200-14-1-.02, Notifiable Diseases, is amended by deleting the footnote denoted by a “†”, that reads “Laboratories required to report all blood lead test results meeting criteria,” in its entirety, and substituting instead the following footnote, denoted by a “+”, which shall read as follows:

Laboratories required to report all blood lead test results and physicians required to report patient information from results  $\geq 10$  ug/dl in accordance with 1200-14-1-.42.

**Authority:** T.C.A. §§4-5-202 and 68-5-104(a).

The proposed rules set out herein were properly filed in the Department of State on the 29th day of August, 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 29th day of December. (08-37)

**THE TENNESSEE HIGHER EDUCATION COMMISSION - 1540**

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

Presented herein is a proposed amendment of the Tennessee Higher Education Commission submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Higher Education Commission to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue to the Tennessee Administrative Register in which the proposed amendment is published. Such petition to be effective must be filed in Suite 1900 of Parkway Towers located at 404 James Robertson Parkway, Nashville, Tennessee 37243-0830 and in the Department of State, Administrative Procedures Division, Eighth Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of proposed rule, contact: Rosie Padgett, Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243-0830, (615) 741-3605.

The text of the proposed rules is as follows:

**NEW RULES**

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1540-1-9-.01 Definitions

1540-1-9-.03 Waiver

1540-1-9-.02 Notice of Information

**1540-1-9-.01 DEFINITIONS**

- (1) "New incoming students" or "student" for the purpose of this chapter shall mean those students enrolling in an institution of higher learning for the first time, regardless of the level at which the student is matriculating. Additionally, the terms shall apply only to persons enrolled in a course or courses offered for college credit toward an associates degree or higher.
- (2) "Institution of higher learning" for the purposes of this chapter shall mean any institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at either the associate, baccalaureate, or graduate level. It is the intent that the Tennessee Technology Centers operating under the jurisdiction of the Tennessee Board of Regents would be among the institutions exempt from the requirements of these rules.

**1540-1-9-.02 NOTICE OF INFORMATION**

- (1) Each institution of higher learning in the state shall provide to all new incoming students, and/or the parent or guardian of new incoming students, information concerning hepatitis B disease. All new incoming 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) Information on both hepatitis B and meningococcal disease may be included in the same notice.

#### **1540-1-9-.03 WAIVER**

- (1) Prior to matriculating into the institution, the new incoming 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 required by Rule 1540-1-9-.02 and has chosen to have the student vaccinated or has not chosen to have the student vaccinated.
- (2) The waiver may be part of the information document required by Rule 1540-1-9-.02.
- (3) A student who is eighteen (18) years of age may sign the waiver, but for minors, the student's parent or guardian must sign the waiver.
- (4) The institution shall maintain the signed waiver forms in a manner and location consistent with the maintenance of similar confidential education records.

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

The proposed rules set out herein were properly filed in the Department of State on the 14<sup>th</sup> day of August, 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 29<sup>th</sup> day of December, 2003. (0811)

### **DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES - 0940 OFFICE OF LICENSURE**

Presented herein are proposed amendments of the Department of Mental Health and Developmental Disabilities submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Department's Office of Legal Counsel, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, and in the Department of State, Publications Division, Eighth Floor, Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee, 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 these proposed amendments, contact Anita M. Daniels, Legal Assistant, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6524.

The purpose of these changes is to continue the process of removing from the rules of the Department of Mental Health and Developmental Disabilities, references to alcohol and drug abuse services, which have been transferred to the Department of Health; and to conform this chapter to the establishment of a new rule, Personal Support Services.

### SUBSTANCE OF PROPOSED RULES

0940-5-1-.01 is amended by deleting paragraph (1) in its entirety and re-numbering the subsequent paragraphs accordingly.

Definitions for the Distinct Category of Personal Support Services Agencies is to be added at the end of Chapter 0940-5-1, and numbered 0940-5-1-.15. Application of Rules for Personal Support Services Agencies is to be added at the end of Chapter 0940-5-3, and numbered 0940-5-3-.26.

As amended, 0940-5-1-.01 shall read:

**0940-5-1-.01 DEFINITION OF GENERAL TERMS USED IN ALL RULES.** As used in Chapters 0940-5-1 through 0940-5-28 of these rules, unless the context indicates otherwise, terms have the following meaning:

- (1) Applicant or Licensee Applicant - The proprietorship, partnership, association, governmental agency, or corporation which makes, or is required to make, application for the licensure of a facility determined to be under the licensure jurisdiction of the Department.
- (2) Capable of Self-Preservation - Means that a person is capable of responding to an approved emergency signal, including prompting by voice, by following a pre-taught evacuation procedure within a reasonable time limitation whether or not the person is fully aware of the reasons for the action. A person is capable of self-preservation if the person is able to transfer unassisted from the bed or another fixed position to an individualized means of mobility, which is continuously available, and able to demonstrate the ability to transverse a pre-defined means of egress from the facility within a reasonable time limitation. Persons who have imposed upon them security measures beyond their control, which prevent their egress from the facility within a reasonable time limitation. Persons who have imposed upon them security measures beyond their control, which prevent their egress from the facility, are not capable of self-preservation.
- (3) Chief Executive Officer or Director - The person appointed, designated, or hired by the governing body to be responsible for the day-to-day operation of the facility or facilities operated by the licensee.
- (4) Civil Rights - The rights of personal liberty guaranteed to citizens by the Constitutions of the United States and the State of Tennessee, and by federal and state statutes.
- (5) Client - The individual who is the direct recipient of the services provided by the residential or non-residential facility subject to the licensure jurisdiction of the Tennessee Department of Mental Health and Mental Retardation.
- (6) Community Living Skills - The array of skills which enables a person to live independently in the community. These include, but are not limited to, skills in the following areas: independent living, educational/vocational, inter-personal, social, problem solving, financial, leisure time, mobility in the community and use of community resources.

- (7) Corporal Punishment - The application of painful stimuli to the body in an attempt to terminate behavior or as a penalty for behavior, but does not mean aversive stimuli.
- (8) Department - The Tennessee Department of Mental Health and Mental Retardation
- (9) Emotional Abuse - Any threatening behavior or statement directed toward a client that causes emotional trauma or fear including, but not limited to, ridicule; gestures which subject the client to humiliation or degradation; threatening motions or noises intended to startle or frighten the client.
- (10) Exploitation - Any act intended to exploit, extort or defraud a client including, but not limited to, misuse of authority over a client; forcing or compelling a client to do anything illegal or immoral; attempting to extort money from a client through devious means; or stealing a client's personal possessions.
- (11) Facility - An institution, treatment resource, group residence, boarding home, sheltered workshop activity center rehabilitation center, hospital, community mental health center, DUI school, counseling center, clinic, halfway house, or other entity by these or other names, providing mental health, mental retardation, or alcohol and drug abuse services.
- (12) Governing Body - The person or persons with primary legal authority and responsibility for the overall operation of the facility and to whom a director/chief executive officer is responsible. Depending upon the organizational structure, this body may be an owner or owners; a board of directors or other governing members of the licensee; or state, city, or county officials appointed by the licensee, etc.
- (13) Grievance Procedure - A procedure for responding to an expression of a cause of distress believed by a client, or by another acting on behalf of a client, to constitute a reason for complaint.
- (14) Guardian - The person legally appointed by a court of competent jurisdiction to have full or limited control of a client's person and/or property.
- (15) Habilitation or Habilitative Services - The structured process by which the service provider assists an individual to acquire and maintain those life skills which enables the individual to cope more effectively with the demands of the individual's own person and environment and to raise the individual's physical, mental, and social functioning. This process includes programs of formal, structured education and training referred to as "individualized program planning".
- (16) Independent Living Skills - The complete continuum of skills involved in increasing independence. These include, but are not limited to the following areas: grooming/personal hygiene, selection/care of clothing, responsible self-medication, personal safety, housekeeping, nutritional/meal preparation, eating/table manners, use of telephone and, money/budgeting concepts.
- (17) Licensed Clinical Psychologist - A psychologist licensed to practice psychology in Tennessee with the certified competency in clinical psychology determined by the State Licensing Board for the Healing Arts and the Board of Examiners in Psychology.
- (18) Licensee - The proprietorship, partnership, association, governmental agency, or corporation which operates a facility under the licensure jurisdiction of the Department.
- (19) Mental Health Services - All services pertaining to and incidental to the prevention, diagnosis, evaluation, treatment, domiciliary care, training, habilitation, counseling, or supervision of mental illness or alcohol or drug dependence or persons who are mentally ill or alcohol or drug abusers.

- (20) Mental Retardation Service - All services pertaining to and incidental to the prevention, diagnosis, evaluation, treatment, domiciliary care, training, habilitation, counseling, or supervision of mental retardation or persons who have mental retardation.
- (21) Mentally Ill Individual - An individual who suffers from a psychiatric disorder, alcoholism, or drug dependence, but excluding an individual whose only mental disability is mental retardation.
- (22) Mobile Non-ambulatory Individual - An individual who is able, without other assistance, to transfer to and-move about only with the aid of a wheelchair, walker, crutch, wheeled platform, or similar device.
- (23) On-Duty/On-Site - A staff person who is on the facility's premises and has the obligation to carry out any job responsibilities designated in his/her job description.
- (24) On-Site - A staff person who is on the facility's premises but is only required to be on duty during an emergency.
- (25) Personal Care - Protective care of a resident who does not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident when in the building. Protective care may include a daily awareness by the management of the resident's functioning, his or her whereabouts, the making and reminding a resident of appointments, the ability and readiness to intervene if a crisis arises for a resident, and supervision in areas of nutrition and medication.
- (26) Physical Abuse - Harmful or painful physical contact, including, but not limited to, the intentional striking, shoving, or pushing of a client by anyone, including another client. Also included is the use of excessive force when restraining a client (e.g., using methods restrain a client which are not outlined in staff training) and acts which constituted sexual activity.
- (27) Physician - A graduate of an accredited medical school authorized to confer upon graduates the degree of Doctor of Medicine (M.D.) who is duly licensed in Tennessee or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of Doctor of Osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee.
- (28) Physician Assistant - An individual who renders services, whether diagnostic or therapeutic, which are acts constituting the practice of medicine and, but for the provisions of T.C.A. § 63-6-204, could only be performed by a licensed physician. [Acts 1985, ch. 376, 1; T.C.A. § 63-19-202]
- (29) Policies and Procedures Manual - A document that describes the philosophy, services, organization, policies, and procedures for implementing services to the clients of a facility.
- (30) Psychiatrist - A physician who specializes in the assessment and treatment of individuals having psychiatric disorders; is certified by the American Board of Psychiatry and Neurology or has the documented equivalent in education, training and/or experience; and who is fully licensed to practice medicine in the State of Tennessee.
- (31) Psychoactive Drug - Any drug used for medical purposes to treat mental disorders and which has as its main action effects on the central nervous system.
- (32) Reputable and Responsible Character - Having a personal and/or business history which suggests that the licensee can be trusted with responsibility for individuals particularly vulnerable to neglect and financial and sexual exploitation. Personal and/or business histories involving operation of substandard facilities and arrest record resulting in a conviction for offense relating to theft, larceny, embezzlement, rape, as-

sault, homicide drugs, and pornography, are inherently, inconsistent with “reputable and responsible character”.

- (33) Seclusion - The placement of an individual alone in a room or other area from which egress is prevented.
- (34) Treatment - Activities, individualized program, modalities, or interventions provided by a mental health professional or mental health personnel designed and implemented for the enhancement/improvement of the individual’s assessed mental health problems.
- (35) Verbal Abuse - Insulting or coarse language directly toward a client which subjects the client to humiliation or degradation, including, but not limited to, swearing at a client, name calling, taunting, and other inappropriate verbal behavior.
- (36) Vocational Services - The services provided to clients involving remunerative work experiences within the licensed facility and the provision of vocational activities of an industrial or productive vocational nature such as assembling, packaging, painting, stripping, wood or metal working, or manufacturing within the licensed facility.
- (37) Volunteer - A person who is not paid by the licensee and whose varied skills are used by the licensee to support and supplement the efforts of the paid facility staff.

0940-5-1-.15 shall read:

**0940-5-1-.15 DEFINITIONS FOR THE DISTINCT CATEGORY OF PERSONAL SUPPORT SERVICES AGENCIES**

- (1) “Agency” means a sole proprietorship, partnership, corporation, limited liability company or limited liability partnership providing personal support services as defined below. Agency includes all entities that employ or subcontract with individuals who provide personal support services to service recipients.
- (2) “Chronic condition” means a mental and/or physical impairment that is expected to last indefinitely.
- (3) “Service recipient” means an individual who, because of a chronic condition, has substantial limitations in two or more major life activities, and who is receiving services in either a regular or temporary residence.
- (4) “Education services” means consultation provided by a licensed nurse to the service recipient or primary family caregiver concerning a chronic condition.
- (5) “Personal support services” means one or more of the following services provided to a service recipient in the individual’s regular or temporary residence to assist with activities of daily living. Personal support services include but are not limited to:
  - (a) Self-care assistance with tasks such as eating, dressing, toileting, bathing, mobility, transfer assistance and other services and supports to maintain health and wellness;
  - (b) Household assistance with tasks such as housekeeping, laundry, meal planning, meal preparation, shopping, bill paying, and use of telecommunication devices;
  - (c) Personal assistance to access community activities such as transportation, social, recreational or other personal activities; and



- (d) Education services.
- (6) "Major life activities" means
  - (a) self-care;
  - (b) receptive and expressive language;
  - (c) learning;
  - (d) mobility;
  - (e) self-direction;
  - (f) capacity for independent living; or
  - (g) economic self-sufficiency.

0940-5-3 .26 shall read:

**0940-5-3-.26 APPLICATION OF RULES FOR PERSONAL SUPPORT SERVICES AGENCIES**

- (1) The licensee providing personal support services must comply with and provide services that comply with the following rules:
  - (a) Chapter 0940-5-6 Minimum program requirements for all facilities;
  - (b) Chapter 0940-5-36 Minimum program requirements for personal support services agencies; and
  - (c) Regardless of whether a licensee is a sole proprietorship, partnership, corporation, limited liability company or limited liability partnership, it must meet all requirements of chapters 0940-5-6, and 0940-5-36.

**Authority:** *T. C. A. §§ 4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; and §§ 33-2-301 and 302*

The proposed rules and proposed amendments to rules set out herein were properly filed in the Department of State on the 29th day of August, 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 29th day of December, 2003. (08-35)

**THE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES -  
0940  
OFFICE OF LICENSURE**

**MINIMUM PROGRAM REQUIREMENTS FOR PERSONAL SUPPORT SERVICES AGENCIES**

Presented herein are proposed rules of the Department of Mental Health and Developmental Disabilities submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Department's Office of Legal Counsel, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, and in the Department of State, Publications Division, Eighth Floor, Snodgrass Building, 312 Eighth Avenue North, Nashville, Tennessee, 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 these proposed rules, contact Anita M. Daniels, Legal Assistant, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6524.

**SUBSTANCE OF PROPOSED NEW RULES**

**CHAPTER 0940-5-36  
MINIMUM PROGRAM REQUIREMENTS FOR PERSONAL SUPPORT SERVICES**

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0940-5-36-.01	Scope	0940-5-36-.04	Standardized Training and Continuing Education Requirements
0940-5-36-.02	Policies and Procedures	0940-5-36-.05	Service Recipient Record Requirements
0940-5-36-.03	Personnel Requirements		

**0940-5-36-.01 SCOPE.**

- (1) These rules apply to all agencies providing one or more personal support services in the regular or temporary residence of service recipients who have substantial limitations in two or more major life activities. The following are exempt from licensure under this chapter:
  - (a) A person who provides personal support services to only one individual;
  - (b) A person who provides personal support services only to members of the individual's own family;
  - (c) A person who provides only household cleaning services to a service recipient;
  - (d) A person who provides services in homeless shelters;
  - (e) A person who provides only delivery services, such as dry-cleaning, food, medication delivery, or medical equipment; and

- (f) Home care organizations licensed under Tennessee Code Annotated, Title 68, Chapter 11, Part 2 as a home care organization, which provides personal support services.

**0940-5-36-.02 POLICIES AND PROCEDURES.**

- (1) The licensee must maintain written policies and procedures that include the following:
  - (a) Requirement that each employee or contract worker be screened for tuberculosis according to procedures of the Tennessee Department of Health or receive a tuberculosis skin test or chest x-ray before working directly with service recipients. Documentation must be maintained in employee personnel file;
  - (b) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;
  - (c) Receipt and disbursement of money on behalf of service recipients;
  - (d) Backup plan for staffing; and
  - (e) Consultation for any service.

**0940-5-36-.03 PERSONNEL REQUIREMENTS.**

- (1) The licensee must:
  - (a) Ensure that individuals who provide personal support services practice infection control procedures and universal precautions that will protect the service recipient from infectious diseases.
  - (b) Have proof of bond coverage for the agency and others who provide personal support services.
  - (c) Have worker's compensation insurance or waiver.
  - (d) Perform criminal background checks on each individual who provides personal support services within ten (10) days of employment.
  - (e) Check the Tennessee Abuse Registry for entry of any individual before he or she provides personal support service to a service recipient.
  - (f) Ensure that individuals providing personal support services demonstrate the following prior to providing personal support services to service recipients:
    - 1. Have language skills sufficient to read and understand instructions, prepare and maintain written reports and records;
    - 2. Have language skills sufficient to communicate with the service recipient; and
    - 3. Have documented training specific to meeting individual service recipient needs in the areas of self care, household management and community living, and methodologies for service delivery.

- (g) Ensure that individuals providing personal support services have access to consultation for any service provided under this chapter;
- (h) Evaluate, at least annually, the ability of individuals providing personal support services to provide daily supports to service recipients; and
- (i) Provide at least quarterly monitoring and documentation of the quality of services provided.

**0940-5-36-.04 STANDARDIZED TRAINING AND CONTINUING EDUCATION REQUIREMENTS.**

- (1) The licensee must ensure that:
  - (a) Individuals who provide personal support services demonstrate basic competency in the following skill/knowledge areas within the first 30 days of employment/contract:
    - 1. Observing, reporting and documenting changes in service recipient's daily living skills;
    - 2. Abuse and neglect detection, reporting and prevention;
    - 3. Service recipient rights;
    - 4. Universal health precautions, including infection control;
    - 5. How to assist service recipients with personal hygiene;
    - 6. Service recipient safety; and
    - 7. Emergencies and disaster procedures.
  - (b) Individuals who provide personal support services receive training on job related topics at least annually.

**0940-5-36-.05 SERVICE RECIPIENT RECORD REQUIREMENTS.**

- (1) The licensee must ensure that each service recipient's record includes the following information:
  - (a) An assessment of the need for a specific personal support service to be provided;
  - (b) A written service plan based on a needs assessment which indicates, type, frequency, duration, and amount of services to be provided;
  - (c) Consent for services by the service recipient or conservator, parent, guardian or legal custodian, or attorney-in-fact under a durable power of attorney (DPOA) for health care;
  - (d) Address and methods to reach the service recipient's conservator, parent, guardian or legal custodian, surrogate decision maker under T.C.A. §§33-3-219 and 3-220, or attorney-in-fact under a durable power of attorney (DPOA) for health care;
  - (e) Documentation of party responsible for payment of services;

- (f) A record of services actually delivered with confirmation by the service recipient or legally responsible party;
- (g) Documentation of medical problems, illnesses and treatments, accidents, seizures, adverse incidents and follow-up, while the service recipient receives services; and
- (h) A written plan and procedure to be followed in the event of an emergency involving care of the service recipient which will provide for emergency transportation, emergency medical care and staff coverage in such events; and
- (i) Documentation of all funds received and disbursed on behalf of the service recipient.

**Authority:** T. C. A. §§4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; 33-2-404; and §§ 33-2-301 and 302.

The proposed rules and proposed amendments to rules set out herein were properly filed in the Department of State on the 29th day of August, 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 29th day of December, 2003. (08-36)

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## **PUBLIC NECESSITY RULES**

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

- 0640 - Department of Finance and administration - Bureau of TennCare - Public Necessity rules due process rights of persons currently eligible and potentially eligible for medical assistance through the TennCare Standard program, chapter 1200-13-15 Rules of the TennCare Administrative Hearings and Officials, 8 T.A.R. (August 15, 2003) - Filed July 14, 2003; effective through December 26, 2003. (07-12)
- 1240 - Department of Human Services - Child Support Division - Public Necessity rules dealing with calculation of child support, chapter 1240-2-4 Child Support Guidelines IV -D, 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-01)
- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-1 Standards for Group Care Homes - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-04)
- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-05)
- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-4 Standards for Family Child Care Homes - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-06)
- 1240 - Department of Human Services - Adult and Family Services Division - Public Necessity rules requiring drug screens of drivers providing child care transportation, chapter 1240-4-6 Licensure Rules for Child Care Centers Serving School-Age Children - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-07)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity rules requiring standard of need to be set by July 1, chapter 1240-1-50 Standard of Need/Income - 8 T.A.R. (August 15, 2003) - Filed July 1, 2003; effective through December 13, 2003. (07-03)
- 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 through November 30, 2003. (06-20)
- 1540 - TN Higher Education Commission - Public necessity rules concerning notification of students concerning hepatitis B disease, chapter 1540-1-9 Immunizations for Newly Matriculating Students, 8 T.A.R. (August 15, 2003) - Filed June 11, 2003; effective through December 23, 2003. (07-11)

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

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

Pursuant to federal law and state law, certain changes are required to be made to the Department's rules pertaining to Conrad J-1 Visa Waiver physicians. The United States Senate, under the "21<sup>st</sup> Century Department of Justice Appropriations Authorization Act," increased the number of allowable Conrad J-1 Visa Waivers from twenty (20) per year per state to thirty (30) per year per state. In addition, the Tennessee General Assembly, on May 12, 2003, amended Tenn. Code Ann., Title 68, Chapter 1, Part 1, and empowered the Commissioner of Health to promulgate public necessity rules pertaining to Conrad J-1 Visa Waivers, including the ability to "establish the types and numbers of primary care and specialty providers . . ." Because amendment of these rules is required by an agency of the federal government, promulgation of these rules through ordinary rulemaking procedures might jeopardize the loss of a federal program or funds.

For complete copies of the text of the notice, please contact Alisa Malone, Sixth Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee, 37247, (615) 741-4545.

Kenneth S. Robinson, M.D.  
Commissioner  
Tennessee Department of Health

**PUBLIC NECESSITY RULES  
OF THE  
TENNESSEE DEPARTMENT OF HEALTH  
BUREAU OF HEALTH SERVICES**

**CHAPTER 1200-20-11  
RULES AND REGULATIONS GOVERNING THE STATE CONRAD J-1 VISA WAIVER PROGRAM**

**NEW RULES**

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1200-20-11-.04	Eligibility	1200-20-11-.08	Waiver of Responsibility

**1200-20-11-.01 INTRODUCTION**

The Department is committed to assuring all Tennesseans have access to quality, affordable health care. The Department will support and facilitate the placement of primary care physicians and physician specialists in accordance with the criteria outlined in these rules. Physicians who are placed must provide medical care to underserved Tennesseans. The Department is positioned to cooperate with and assist any federal agency in its sponsoring and review of requests to waive the foreign residency requirement on behalf of health care physicians holding J-1 visas who will practice in an acceptable location.



*Authority:* T.C.A. §§ 4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

## **1200-20-11-.02 DEFINITIONS**

As used in these rules, the terms below shall have the following meanings:

- (1) Complete application — submittal, by certified mail, of all forms and information outlined by the Department in the policies and procedures for the State Conrad J-1 Visa Waiver Program to the Nashville, Tennessee office of the State Conrad J-1 Visa Waiver Program.
- (2) Conrad Waiver — see State Conrad J-1 Visa Waiver Program.
- (3) Critical Access Hospital (CAH) — a federally designated hospital that is very small with staffing flexibility under Medicare rules for providing emergency, outpatient, and short-stay inpatient services.
- (4) Department — Tennessee Department of Health.
- (5) Health Professional Shortage Area (HPSA) — a geographical area designated by the Secretary of the U.S. Department of Health and Human Services as having a shortage of health manpower (formerly Health Manpower Shortage Area).
- (6) Health Resource Shortage Area (HRSA) — an area designated annually by the Commissioner of the Department as having inadequate resources in place to ensure access to primary, pediatric, obstetric or TennCare Services. It includes State designated Health Resource Shortage Areas for Primary, Pediatric, Obstetrical Care and TennCare.
- (7) Indigent patients — patients who are at or below two-hundred percent (200%) of the federal poverty level with no comprehensive third-party coverage.
- (8) Managed Care Organization (MCO) — an entity rendering or arranging necessary medical services to persons who are eligible for Medicaid or TennCare Standard and who are enrolled in the TennCare managed care program. MCO's are paid by the State of Tennessee authorized and consistent with a Section 1115 waiver of the Social Security Act granted by the Health Care Financing Administration (renamed in 2001 as the "Centers for Medicare and Medicaid Services or "CMS"), U.S. Department of Health and Human Services.
- (9) Medically Underserved Area (MUA) — a geographical area which is designated by the Secretary of the U.S. Department of Health and Human Services as having a shortage of health care services using several factors, in addition to the availability of health care providers, including infant mortality rate, poverty rate, and percentage of population aged sixty five (65) or over.
- (10) Primary care physician — a physician who has completed a residency in Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine and who is also supported by a sponsoring employer.
- (11) Primary health care — services which emphasize first contact patient care. The provider assumes overall and ongoing responsibility for the patient in both health maintenance and treatment of illness, emphasizing continuity of care over the entire spectrum of health care services.
- (12) Physician specialist — a physician who has completed subspecialty training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease,

Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery (subject to the restrictions noted herein). Each applicant must be supported by a sponsoring employer.

- (13) Rural areas — all counties in Tennessee, excluding Shelby, Davidson, Knox and Hamilton.
- (14) Rural Referral Center (RRC) – a federally designated hospital that is authorized under the Tax Equity and Fiscal Responsibility Act of 1982. These are rural hospitals with generally high volume whose costs more closely resemble those of urban hospitals because they treat regionally or nationally referred complex cases.
- (15) Sole Community Hospital (SCH) – a federally designated hospital that is the only provider of hospital care in its market area either because it is geographically isolated or because severe weather or travel conditions prevent travel to another hospital offering similar services.
- (16) Sponsoring employer — a health care facility or physician practice located in qualifying communities which provides primary health care to underserved residents. Examples of these facilities are hospitals, primary care clinics, community health clinics, local health departments, or private physician offices which routinely accept TennCare and indigent patients.
- (17) State Conrad J-1 Visa Waiver Program — the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416) has provided an additional basis upon which a foreign medical graduate may seek a waiver of the two-year home residence requirement. Section 220(a) of that Act added a provision that authorizes a State Department of Public Health or its equivalent to request the Director of the United States Information Agency to recommend that Immigration and Naturalization Service grant the waiver.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

### **1200-20-11-.03 NECESSITY OF LICENSE AND PROFESSIONAL CREDENTIALS**

An applicant for a State Conrad J-1 Visa Waiver must be eligible for and obtain an unencumbered Tennessee license to practice the candidate's profession in the State of Tennessee. In addition, the physician must be board eligible or board certified in the specialty in which the practitioner proposes to practice in the State.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

### **1200-20-11-.04 ELIGIBILITY**

- (1) The State Conrad J-1 Visa Waiver Program in Tennessee is limited to those primary care physicians who have completed a residency in one of the following medical specialties: Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine, or a physician specialist who has completed subspecialty

training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology, Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery (subject to the restrictions noted herein). Each applicant must be supported by a sponsoring employer.

- (2) General Surgery specialist applications will only be accepted for Sole Community Hospitals located in a HPSA or MUA.
- (3) At the discretion of the Department, the Department will support and facilitate the placement of primary care physicians in at least seventy percent (70%) of the slots permitted by federal law each federal fiscal year in health care practice sites which are located in federally designated Health Professional Shortage Areas (HPSAs) and/or Medically Underserved Areas (MUAs), either of which must also be located within the top thirty (30) State designated Health Resource Shortage Areas (HRSAs). Each primary care physician must agree to practice primary health care at that site for a minimum of forty (40) hours per week and for a minimum of three (3) years.
- (4) At the discretion of the Department, the Department will also support and facilitate the placement of one (1) physician specialist per hospital in up to thirty percent (30%) of the slots permitted by federal law between October 1 and June 30 of each federal fiscal year in affiliation with hospitals, as designated by the Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital either of which must be located in a HPSA or MUA. Each physician specialist must agree to practice their speciality in affiliation with that hospital for a minimum of forty (40) hours per week and for a minimum of three (3) years. If the full complement of thirty percent (30%) of the slots for physician specialists have not been committed by April 1, an additional application from a facility which has already received a physician specialist slot between October 1 and March 31 will be accepted and applications for a physician specialist will also be accepted from Critical Access Hospitals located in a HPSA or MUA from April 1 to June 30 of each federal fiscal year. If the full complement of thirty percent (30%) of slots for physician specialists have not been committed by June 30, applications from primary care physicians will be considered for any unfilled physician specialist slots. Health care practitioners who are placed must provide medical care to underserved Tennesseans.
- (5) A sponsoring employer will be considered for a J-1 visa waiver placement if its primary purpose is the provision of health care services to those who live in underserved communities based on the criteria set forth herein.
- (6) The Department will facilitate the placement of J-1 primary care physicians only in rural areas of the State. The Department will facilitate the placement of physician specialists in affiliation with hospitals, as designated by the Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital either of which must be located in a HPSA or MUA. Physician specialists who request placement as a primary care physician under the State Conrad J-1 Visa Waiver Program will be required to adhere to all the rules and regulations herein specific to primary care physicians.

**Authority:** T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

**1200-20-11-.05 APPLICATION REVIEW, APPROVAL, DENIAL**

- (1) The Department will only consider a complete application that has arrived by certified mail submitted by the sponsoring employer on behalf of the physician. Submittal by any other means, including, but not limited to, hand delivered or incomplete applications, will be rejected and the application will be returned COD/certified to the sponsoring employer. The HRSAs will be designated annually. Applications for primary care practitioners will only be accepted for the HRSAs in effect at the time the complete application is received. For the federal fiscal year 2003 only, physician specialist applications will be accepted until September 30, 2003.
- (2) If an employer proposes to utilize the J-1 primary care physician at more than one (1) site within a HRSA or a physician specialist in affiliation with more than one (1) hospital, within a HPSA or MUA the name and location of each facility and a schedule of the days and hours that the physician will be available at each site must be included in the application.
- (3) Completed applications will be considered in the order in which they were received. All completed applications received beyond the maximum number of placements permitted by federal law per year will be held in a pending file to be reconsidered before any other applications at the beginning of the new federal fiscal year. In order to receive such reconsideration, however, an applicant must submit a request, in writing, setting forth his/her desire to be reconsidered, and such request must be received by the Department prior to the commencement of the Department's reconsideration process. Upon the Department's receipt of a written request for reconsideration, each applicant will be contacted by the Department to confirm its receipt of the request and confirm the applicant's continued desire for reconsideration.
- (4) The Department will review each waiver application to ensure that the proposed placement will not adversely affect or compromise delivery of health care in the HPSA or MUA in a HRSA service area. The Department is wholly responsible for the interpretation of this policy.
- (5) Once it is determined the application is complete and the applicant meets all of the appropriate requirements, a number will be assigned to the application which indicates that the Department has accepted the application as one of its allowable placements. A certified letter will be sent to the sponsoring employer notifying the sponsoring employer that the application has been forwarded to the appropriate federal agency for processing.
- (6) If the applicant does not meet State requirements, the Department will notify the sponsoring employer by certified mail. Notification of a failure to meet federal requirements will be made by the federal agency directly to the Department which, in turn, will notify the sponsoring employer.

*Authority:* T.C.A. §§ 4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

**1200-20-11-.06 PROGRAM REQUIREMENTS**

- (1) The primary care physician or physician specialist seeking a J-1 visa waiver and the Chief Executive Officer of the sponsoring employer must each submit semi-annual reports to the Department which assure that the sponsoring employer and the physician are complying with the rules and regulations of the program. The first reports must be submitted within thirty (30) days after employment begins and every six (6) months thereafter, until the three-year commitment is complete. Reporting forms will be supplied to the physician and the sponsoring employer by the Department.

- (2) All primary care physicians and physician specialists who have been granted a J-1 visa waiver are required to grant Department representatives, who shall maintain full confidentiality, reasonable access to all records maintained by the physician's practice which are pertinent to ascertaining compliance with these rules and regulations, including, but not limited to, patient files and payment records. From time to time, audits for compliance with these rules and regulations may be performed by staff of the Department.
- (3) At all times, the primary care physician or physician specialist who has been granted a J-1 visa waiver must operate the practice consistent with established standards recognized or adopted by the appropriate medical specialty.
- (4) A primary care physician and physician specialist who has been granted a J-1 visa waiver is not permitted to transfer from one site to another unless such physician receives prior written approval from the Department. An unapproved transfer may result in, among other things, cancellation of the visa waiver.
- (5) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must complete an exit interview within ninety (90) days of the completion of his/her three-year obligation, or at such point that the employment contract is terminated by the sponsoring site, the physician, or the Department. The Department will conduct the exit interview, which will concentrate on the physician's experiences in Tennessee and his/her future plans for practicing at the current location or another location.
- (6) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must agree to enroll with a sufficient number of MCOs which serve at least fifty-one percent (51%) of the TennCare enrolled population in the physician's primary county of practice. In the event that one (1) or more MCO's have closed enrollment to new providers which would not allow the physician to meet this criteria, the physician must demonstrate to the Department that a good faith effort was made and that the physician has enrolled in all other MCO's accepting new providers.
- (7) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must agree, without exception, to provide services to indigent patients as long as the provider's total number of indigent patient visits does not exceed fifteen percent (15%) of the provider's total practice visits.
- (8) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must accept assignment under Section 1842(b)(3)(ii) of the Social Security Act as full payment for all services for which payment may be made under Part B of Title XVIII of such Act (Medicare). All primary care physicians and physician specialists must also accept TennCare payment as payment in full for TennCare patients.
- (9) The sponsoring employer must make known to the community that primary care physicians and physician specialists who have been granted a J-1 visa waiver will comply with the terms and conditions stated in these rules and regulations by posting a notice stating the terms and conditions in a conspicuous place in the public waiting area of the facility.

*Authority:* T.C.A. §§ 4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

#### **1200-20-11-.07 NONCOMPLIANCE**

Failure on the part of the sponsoring employer or the primary care physician or physician specialist who has been granted a J-1 visa waiver to comply with the rules and regulations of this program will result in a report of noncompliance to the Immigration and Naturalization Service and may, among other things, make the site ineligible for future placements for a period of time to be determined by the Department.

**Authority:** *T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

#### **1200-20-11-.08 WAIVER OF RESPONSIBILITY**

- (1) The Department is not responsible for exceptions to or interpretations of these rules and regulations which have occurred without the written approval of the Immigration and Naturalization Service or its designee.
- (2) The Department is not responsible for any practice arrangements or contractual obligations entered into by primary care physicians or physician specialists prior to approval of a J-1 visa waiver request. However, all such arrangements and all related contracts must be provided to the Department to ensure compliance with the requirements of these rules.
- (3) The Department assumes no responsibility for future actions taken by the Immigration and Naturalization Service or any potential investigation that may be conducted by the Office of Inspector General. It is the responsibility of all primary care physicians, physician specialists who have been granted a J-1 visa waiver and the employers to meet any reporting requirements of the Immigration and Naturalization Service or the Department.

**Authority:** *T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

#### **REPEALS**

Chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program is repealed in its entirety.

The public necessity rules set out herein were properly filed in the Department of State on the 13th day of August , 2003, and will be effective from the date of filing for a period of 165 days. These public necessity rule will be in effect through the 25th day of January, 2003. (08-10)

## **RULEMAKING HEARINGS**

### **TENNESSEE COMMISSION ON AGING AND DISABILITY - 0030**

The Tennessee Commission on Aging and Disability will hold a public hearing to receive comments concerning proposed rules for verifying background information of employees and volunteers who provide direct, in-home care for elderly individuals or adults with disabilities. The Commission will also receive comments on proposed rules regarding minimum requirements for case management service provided under the State-Wide Medicaid Waiver Home and Community Based Services Program for Elderly and Disabled Adults. This hearing will be conducted as prescribed by Uniform Administrative Procedures Act T.C.A. §4-5-201 et. seq., and will take place at Knowles Senior Citizens Center, 174 Raines Avenue, Nashville, TN at 1:30 p.m. CST on October 7, 2003.

Written comments will be considered if received by close of business October 8, 2003, at the office of the Tennessee Commission on Aging and Disability, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860. Written comments may be transmitted in person, by U.S. Postal Service, a commercial courier, e-mail or facsimile. Any form of written comment must be identifiable by the sender's name and address, including zip code. Facsimile submissions will be accepted at 615-741-3309. Electronic mail submissions can be made to [tnaging@state.tn.us](mailto:tnaging@state.tn.us).

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Commission on Aging and Disability to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, facsimile, e-mail or other means, and should be made no less than ten days prior to October 7, 2003 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Commission on Aging and Disability, ADA Coordinator, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860, 615-741-2056. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298) or call the Commission on Aging and Disability TDD number, 615-532-3893.

For complete copies of the text of the notice, please contact Nancy Brode, Tennessee Commission on Aging and Disability, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860, telephone 615-741-2056, FAX 615-741-3309 or e-mail [tnaging@state.tn.us](mailto:tnaging@state.tn.us).

### **SUBSTANCE OF PROPOSED RULES**

#### **RULES OF**

#### **TENNESSEE COMMISSION ON AGING AND DISABILITY**

#### **CHAPTER 0030-1-6**

#### **REQUIREMENT TO VERIFY BACKGROUND INFORMATION FOR NEW EMPLOYEES AND VOLUNTEERS**



**0030-1-6-.01 PURPOSE.** The Commission on Aging and Disability requires all contractors, grantees, subcontractors and service providers to verify individual background information for newly-hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of disabled or elderly persons in their homes. [T.C.A. 71-2-111]

**0030-1-6-.02 CRIMINAL HISTORY BACKGROUND CHECKS.** If the employing agency requests a criminal history background check to be conducted by the Tennessee Bureau of Investigation (TBI) or the Federal Bureau of Investigation (FBI), the process must be initiated by the submission of fingerprint cards to the investigating agency. Any cost incurred by the TBI or the FBI shall be paid by the organization requesting the investigation and information. If a criminal history background check is conducted by the TBI or the FBI, the payment of all costs associated with the investigation shall be made in the amounts established by T.C.A. 38-6-103.

**0030-1-6-.03 MINIMUM REQUIREMENTS.** The following requirements shall be considered minimum requirements. Any provider agency subject to this part shall have the option to make more intensive background checks provided that the agency has established in writing the criteria and process for such checks.

**0030-1-6-.04 REPORTING PRIOR CONVICTIONS.** A service provider agency shall require all applicants for pay or volunteer employment to list any prior conviction by any local, state, federal or military court of any felony or any other conviction involving sexual crimes, crimes against a person, fraud involving financial exploitation and/or substance abuse in a format prescribed by the Commission on Aging and Disability.

**0030-1-6-.05 CHECKING EMPLOYMENT AND PERSONAL REFERENCES.** The service provider agency shall check past work and personal references prior to employment of applicants.

- (1) At a minimum the organization shall communicate directly with the most recent employer and each employer identified by the applicant as having employed the applicant for more than six (6) months in the past five (5) years.
- (2) The organization shall communicate directly with at least two (2) of the personal references identified by the applicant.
- (3) Within or prior to ten (10) days of employment, or volunteer affiliation, of such person, employing organizations shall begin the process of verifying background information as required by this subsection.

**0030-1-6-.06 REQUIREMENTS FOR EMPLOYEES OR VOLUNTEERS.** As a condition of employment with a provider agency, any person who applies to work for the agency as an employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons receiving home and community based services, if so requested by the employing agency, shall:

- (1) Agree to the release of all investigative records from any source, including federal, state and local governments to the hiring organization for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization;
- (2) Supply fingerprint samples for the purpose of submitting for a criminal background investigation by the Tennessee Bureau of Investigation. If no disqualifying record is identified, the TBI shall, if so requested, send the fingerprints to the FBI for a national criminal history record check;
- (3) Release information for a criminal background investigation by a state licensed private investigation company;



- (4) Provide past work history containing a continuous description of activities over the past five (5) years; and/or
- (5) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years.

**0030-1-6-.07. REQUIREMENTS FOR EMPLOYERS.** Each provider agency must document in its personnel files for each employee or volunteer subject to this part:

- (1) The applicant's statement of any prior convictions;
- (2) The results of its check of personal and/or employment references;
- (3) The results of a county criminal history check for each of the last two counties in which the applicant lived or worked, if such a check is performed;
- (4) The results of the check of all Tennessee Department of Health databases of licensed health professionals including Certified Nursing Assistants (CNA);
- (5) The results of any other checks which may have been requested by the provider agency, including background checks by the Tennessee Bureau of Investigation or the Federal Bureau of Investigation; and,
- (6) Justification/explanation of the decision to employ an individual if the background check identified negative information.

*Authority:* T.C.A. §§ 4-5-201, 71-2-105(b)(1), and 71-5-111(b).

## SUBSTANCE OF PROPOSED RULES

### CHAPTER 0030-2-2

#### STATE-WIDE MEDICAID HOME AND COMMUNITY BASED SERVICES WAIVER FOR ELDERLY AND DISABLED ADULTS

**0030-2-2 .01 PURPOSE.** The purpose of this rule is to implement the Medicaid waiver long-term care home and community based services program authorized by T.C.A. Section 71-5-1408 which is intended to serve low-income nursing home eligible individuals in HCBS settings who have been pre-admission evaluation (PAE) approved by the Bureau of TennCare and certified eligible for Medicaid services by the Department of Human Services.

#### **0030-2-2-.02 MINIMUM REQUIREMENTS (PRINCIPLES) FOR CASE MANAGEMENT SERVICES.**

- (1) Case management services offered under the long-term care services plan authorized at T.C.A. 71-5-1408 shall meet the principles of the Older Americans Act [42 U.S.C. 3026(a)(8)] to include the following:
  - (a) Case management must be provided by a public agency or a nonprofit private agency. [42 U.S.C. 3026 (a)(8)(C)]

- (b) The case manager must provide each individual seeking services under the waiver a comprehensive list of agencies that are authorized to provide services within the jurisdiction of the area agency on aging and disability. [42 U.S.C. 3026 (a)(8)(C)(i)]
- (c) The case manager must provide each individual enrolled in the waiver a statement specifying that the individual has a right to make an independent choice of service providers and document the receipt by each enrollee of such statement. [42 U.S.C. 3026 (a)(8)(C)(ii)]
- (2) Case managers shall be required to act as exclusive agents for individual enrollees receiving waiver services and must not promote any agency providing such services. [42 U.S.C.A. 3026 (a)(8)(C)(iii)]
- (3) The agency providing case management services shall not provide any other services to the individual receiving case management. [T.C.A. 71-5-1402 (e)(10)]
- (4) Case managers should seek to maximize the use of voluntary and existing services for waiver enrollees. [T.C.A. 71-5-1402 (e)(11)]

**Authority:** T.C.A. §§ 4-5-201, 71-2-105(b)(1), and 71-5-1408(d) and (e).

The notice of rulemaking set out herein was properly filed in the Department of State on the August 29, 2003. (08-33)

### **THE BOARD OF CHIROPRACTIC EXAMINERS - 0260**

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-4-101, 63-4-103, 63-4-106, 63-4-108, and 63-4-110. 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 20th 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 0260-2-.02 Scope of Practice, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (3), so that as amended, the new paragraphs (2) and (3) shall read:

- (2) The scope of practice of chiropractic physicians shall be as set forth in T.C.A. § 63-4-101.
- (3) Spinal manipulation / Spinal adjustment
  - (a) Training must be performed in chiropractic institutions or institutions that specialize in spinal manipulative therapy. Spinal manipulation is a highly skilled maneuver that requires adequate training. Four hundred (400) hours of classroom instruction and eight hundred (800) hours of supervised clinical training are considered a minimum level of education to properly administer the techniques.
  - (b) Spinal manipulation must be performed by hand or with the use of instruments such as Activator, Grostic, Pettibon, or Sweat instrumentation.
  - (c) Manipulation moves the spinal segments beyond their normal range of motion for the correction of nerve interference and articular dysfunction, but without exceeding the limits of anatomical integrity.
  - (d) A chiropractic diagnosis is necessary to properly establish the indications and contraindications before the administration of the spinal manipulation procedure.

**Authority:** T.C.A. §§ 4 5 202, 4 5 204, 63 4 101, and 63-4 106.

Rule 0260-2-.04 Qualifications for Licensure, is amended by deleting subpart (1) (b) 2. (i), subpart (1) (b) 2. (ii) and part (1) (b) 3. in their entirety and substituting instead the following language, so that as amended, the new subpart (1) (b) 2. (i), the new subpart (1) (b) 2. (ii) and the new part (1) (b) 3. shall read:

- (1) (b) 2. (i) Before licensure will be granted to an applicant matriculating in a chiropractic college prior to year 2000, the applicant must provide a transcript of grades showing a minimum of two (2) full academic years of college or university work of at least sixty (60) semester hours or its equivalent from an accredited institution; or
- (1) (b) 2. (ii) Before licensure will be granted to an applicant matriculating in a chiropractic college in year 2000 and beyond, the applicant must provide proof that a bachelor's level education or its equivalent has been obtained from an accredited college or university.
- (1) (b) 3. The educational requirements of part (1) (b) 2. of this rule are applicable regardless of whether that education was obtained before or after matriculating into a chiropractic college.

**Authority:** T.C.A. §§ 4 5 202, 4 5 204, 63-4-103, 63 4 106, 63 4 108, and 63-4-110.

Rule 0260 2 .18 Mandatory Release of Patient Records, is amended by deleting paragraphs (1), (2), and (3) in their entirety, and is further amended by adding the following language as a new sentence, so that as amended, the catchline and the rule shall read:

**0260-2-.18 MANDATORY RELEASE OF PATIENT RECORDS.** The mandatory release of patient records shall be as set forth in T.C.A. §§ 63 2 101 and 63 2 102.

*Authority:* T.C.A. §§ 4 5 202, 4 5 204, 63 2 101, 63 2 102, and 63-4 106.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of August, 2003. (08-03)

**DEPARTMENT OF COMMERCE AND INSURANCE - 0780**  
**DIVISION OF REGULATORY BOARDS**  
**PRIVATE PROTECTIVE SERVICES PROGRAM**

There will be a hearing before the commissioner of Commerce and Insurance or her designee to consider the promulgation of rules pursuant to T.C.A. § 62-35-129. 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 Conference Room 160 on the first floor of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 1:30 p.m. (Central Time) on the 23<sup>rd</sup> day of October, 2003.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids 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 (the date the party intends to review such filings), to allow time for the Department of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5<sup>th</sup> Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact Donna Hancock, Director of Private Protective Services at 500 James Robertson Parkway, Davy Crockett Tower, 2<sup>nd</sup> Floor, Nashville, Tennessee 37243, telephone (615) 532-9160.

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 0780-5-2**  
**PRIVATE PROTECTIVE SERVICES**

**NEW RULES**

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**0780-5-2-.25 CONTINUING EDUCATION.** The commissioner of the Tennessee Department of Commerce and Insurance is authorized by T.C.A. § 62-35-129(b) to establish rules necessary to effectuate the purposes of the Tennessee Private Protective Services Act, which, among other things, requires that all certified trainers, qualifying agents, and qualifying managers annually complete six (6) hours of continuing education approved by the commissioner as a prerequisite for continued operation in this state. The purposes of the following rules are to prescribe the basic continuing education requirements for present and future certified trainers, qualifying agents, and qualifying managers, and to establish standards by which continuing education programs will be evaluated for the awarding of credit.

*Authority:* T.C.A. §§ 62-35-129(b) and 62-35-140.

**0780-5-2-.26 CONTINUING EDUCATION DEFINITIONS.**

For the purposes of rules 0780-5-2-.25 through 0780-5-2-.38, the following definitions are applicable:

- (1) “Active” means a licensed certified trainer, qualifying agent, or qualifying manager who has complied with the continuing education requirements prescribed herein.
- (2) “Advisory Committee” means the Private Protective Services Advisory Committee, created under the authority of T.C.A. § 62-35-129(c).
- (3) “Commissioner” means the commissioner of the Department of Commerce and Insurance.
- (4) “Inactive Licensee” means a certified trainer, qualifying agent, or qualifying manager who has obtained inactive status from the commissioner pursuant to rule 0780-5-2-.29 and is not required to comply with the continuing education requirements prescribed herein, or who has otherwise failed to comply with the requirements and procedures set forth in this chapter for obtaining the continuing education credit required by T.C.A. § 62-35-140. An inactive licensee may not actively conduct or hold him or herself as a certified trainer, qualifying agent, or qualifying manager or in the State of Tennessee.
- (5) “Licensee” means a certified trainer, qualifying agent or qualifying manager who holds a license issued by the commissioner to engage in or hold him or herself out to the public as a certified trainer, qualifying agent, or qualifying manager.
- (6) “Professional Development Hour (PDH)” means an hour of continuing education found to be acceptable by the commissioner.

*Authority:* T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.27 BASIC REQUIREMENTS.** Every certified trainer, qualifying agent and qualifying manager must annually complete six (6) PDH's of continuing education approved by the commissioner as a prerequisite for continued operation in this state. Proof of such continuing education shall be forwarded to the commissioner by December 15 of each year.

*Authority:* T.C.A. §§ 62-35-129(b) and 62-35-140.

**0780-5-2-.28 TYPES OF ACCEPTABLE CONTINUING EDUCATION.**

- (1) Continuing education activities for which credit may be given by the commissioner include college and university courses and those portions of technical meetings, seminars, tutorials, short courses and correspondence courses that are related to the practice of being a certified trainer, qualifying agent, or qualifying manager.
- (2) The commissioner will grant credit for only such continuing education and professional activities that satisfy the following criteria:
  - (a) There is clear purpose and objectivity for each activity;
  - (b) The content of each presentation is well organized and presented in a sequential manner;
  - (c) There is evidence of pre-planning which should include the opportunity for input by the target group to be served;
  - (d) The presentation will be made by those who are well-qualified by reason of education or experience; and
  - (e) There is provision for individual participant registration which will include information required for record-keeping and reporting.
- (3) The commissioner will grant no credit to a licensee for a course, technical meeting, seminar or tutorial repeated by that licensee within three (3) years (if credit was originally granted), unless, in the commissioner's opinion, there is a substantial change in the content of such course, technical meeting, seminar or tutorial or the complexity of the subject matter warrants award of additional credit.
- (4) Other activities which may be used to satisfy continuing education requirements are:
  - (a) Approved programs conducted by corporations, government agencies or other organizations;
  - (b) Authorship of published papers, articles or books; and
  - (c) First-time preparation for and presentation of technical meetings, short courses or seminars.
- (5) The commissioner or the commissioner's designee may request the Advisory Committee's advice on any and all activities that are submitted pursuant to this chapter for the purpose of receiving continuing education credit.

*Authority:* T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.29 INACTIVE LICENSES.**

- (1) A licensee may request in writing to be placed in inactive status.
- (2) An inactive licensee will be permitted to retain licensure by paying the annual renewal fee for licensure without submitting proof of complying with the continuing education requirements prescribed herein.
- (3) An inactive licensee may not engage in the practice of being or holding him or herself out to the public as a certified trainer, qualifying agent, or qualifying manager in the State of Tennessee. Any practice or offer to practice of being a certified trainer, qualifying agent, or qualifying manager in the State of Tennessee by an inactive licensee shall constitute misconduct for the purpose of T.C.A., § 62-35-130 (Disciplinary powers of Commissioner – Civil penalties).

*Authority:* T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.30 REINSTATEMENT TO ACTIVE LICENSURE.**

- (1) An inactive licensee seeking to reinstate a license that has been inactive for one (1) year or more must submit a request in writing to the commissioner with a fee of two hundred dollars (\$200.00) and must satisfy one (1) of the following requirements:
  - (a) Satisfaction of the annual PDH requirement multiplied by the number of years of inactive status up to a maximum of thirty (30) PDH's; or
  - (b) Successful completion of the certified trainer, qualifying agent, or qualifying manager's examination, whichever is applicable, or of a new application for licensure, within one (1) year immediately prior to application for reinstatement.
- (2) An inactive licensee seeking to reinstate an inactive license of less than one (1) year must meet the annual PDH requirement.

*Authority:* T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.31 NONCOMPLIANCE.** Unless a request for inactive status is made, any licensee failing to timely furnish the required continuing education form, properly completed and signed, shall be deemed to be an inactive licensee and the licensee shall lose the right to practice as or to hold him or herself out to the public as a certified trainer, qualifying agent, or qualifying manager in the State of Tennessee, regardless of the date of expiration of the license at issue.

*Authority:* T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.32 HARDSHIPS.**

- (1) The commissioner may exempt a licensee from complying with all or part of the continuing education requirements for a given year in the following cases:

- (a) A licensee affected by physical disability, illness, or other extenuating circumstances as reviewed and approved by the commissioner; provided that adequate supporting documentation is furnished to the commissioner; or
- (b) A non-career military licensee serving on active duty in the armed forces of the United States for a period of one hundred twenty (120) consecutive days in a calendar year; provided that the adequate supporting documentation is furnished to the commissioner.

**Authority:** T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.33 REPORTS AND RECORDS.**

Licensees shall maintain a file in which records of continuing education activities are kept, including dates, subjects, duration of programs, printed program schedules, registration receipts or other proof of participation, and other appropriate documentation, for a period of three (3) years after the date of the program or activity.

**Authority:** T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.34 SPONSORS.** Any sponsor that offers an organized continuing education program for which credit for the program will be requested shall keep a record of attendees at each session and shall furnish the commissioner a copy of the attendees within thirty (30) days of the conclusion of the program.

**Authority:** T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.35 APPROVAL OF PROGRAMS.**

- (1) Approval of any program may be granted to a sponsoring organization or individual if the following information is submitted to the commissioner:
  - (a) Instructors and their qualifications;
  - (b) Synopsis of course material; and
  - (c) A fee of fifty dollars (\$50.00) payable to the Department of Commerce and Insurance.
- (2) Upon conclusion of the approved course the sponsor shall submit to the commissioner the record of attendees as provided in rule 0780-5-2-.34 above and the time, place and schedule of activities.

**Authority:** T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.36 AUDITS.** The commissioner may conduct random audits of continuing education activities and licensee participation therein. Should deficiencies be discovered, licensees will be notified and have six (6) months to satisfy the deficiencies, except where such audits reveal fraudulent misrepresentations to have been made by a licensee.

**Authority:** T.C.A. §§ 62-35-129(b) and 62-35-140.



**0780-5-2-.37 COMITY.**

- (1) The commissioner will deem a licensee to have met the continuing education requirements provided herein if such licensee, when making annual renewal of Tennessee licensure, certifies in writing the following:
  - (a) The licensee resides in another state or territory which has been recognized by the commissioner as having continuing education requirements acceptable to the commissioner; and
  - (b) The licensee has satisfied all continuing education requirements of that state or territory.

*Authority:* T.C.A. §§62-35-129(b) and 62-35-140.

**0780-5-2-.38 ADVISORY COMMITTEE.** The commissioner may seek the aid of the advisory committee to assist the commissioner in evaluating the standards by which continuing education programs will be evaluated for purposes of calculating the allowable credit to be awarded.

*Authority:* T.C.A. §§62-35-129(a) and (c).

The notice of rulemaking set out herein was properly filed in the Department of State on the August 29, 2003. (08-34)

**BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES - 1370**

There will be a hearing before the Tennessee Board of Communications Disorders and Sciences to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-17-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 5<sup>th</sup> Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 20<sup>th</sup> 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, 1<sup>st</sup> Flr., Cordell Hull Building, 425 5<sup>th</sup> Ave. N., Nashville, TN 37247-1010, (615) 532-4397.

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

## SUBSTANCE OF PROPOSED RULES

### AMENDMENTS

Rule 1370-1-.03, Necessity of Licensure or Registration, is amended by deleting paragraph (1) and subparagraph (2) (c) in their entirety and substituting instead the following language, so that as amended, the new paragraph (1) and the new subparagraph (2) (c) shall read:

- (1) Prior to engaging in the practice of speech language pathology or audiology, a person must hold a current Tennessee license pursuant to T.C.A. § 63-17-110, unless the person meets the exemption requirements of T.C.A. §§ 63-17-111 (g) or 63-17-114.
- (2) (c) Inactive Licensees - Pro Bono Services category - Licensees are subject to all rules governing renewal, retirement, reinstatement reactivation, and continuing education, as provided by Rules 1370-1-.09, 1370-1-.11, and 1370-1-.12. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-110, 63-17-111, 63-17-114, and 63-17-127.

Rule 1370-1-.05, Procedures for Licensure, is amended by deleting subparagraph (3) (n) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (n) shall read:

- (3) (n) A speech language pathologist or audiologist who holds an ASHA certification or equivalent, or holds a doctor of audiology degree (AuD) from an accredited institution of higher learning and has passed the examination required for licensure under § 63-17-110 (b) (2), or is licensed in another state and who has made application to the Board for a license in the State of Tennessee, may perform activities and services of a speech language pathology or audiological nature without a valid license pending disposition of the application. For purposes of this rule, “pending disposition of the application” shall mean a Board member or the Board’s designee has determined the application is complete and the applicant has received written authorization from the Board member or the Board designee to commence practice, pursuant to T.C.A. § 63-1-142.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-142, 63-17-105, 63-17-110, 63-17-111, and Public Chapter 172 of the Public Acts of 2003.

Rule 1370-1-.06, Fees, is amended by deleting subparagraph (1) (g) and paragraph (2) in their entirety and substituting instead the following language, and is further amended by adding the following language as new parts (3) (a) 4., (3) (b) 4., and (3) (c) 4. and renumber the remaining parts accordingly, so that as amended, the new subparagraph (1) (g), the new paragraph (2), and the new parts (3) (a) 4., (3) (b) 4., and (3) (c) 4. shall read:

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

(3)	(a)	4.	Inactive Volunteer Licensure Renewal Fee	0.00
(3)	(b)	4.	Inactive Volunteer Licensure Renewal Fee	0.00
(3)	(c)	4.	Inactive Volunteer Licensure Renewal Fee	0.00

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-115, 63-17-116, and 63-17-127.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of August, 2003. (08-07)

### **BOARD FOR PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS - 0450**

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 27<sup>th</sup> 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 0450-1-.01, Definitions, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Approved Supervisor - PC - An approved supervisor for professional experience subsequent to the master's degree is defined as a currently Licensed Professional Counselor, Licensed Professional Counselor with Mental Health Service Provider designation, licensed marital and family therapist, licensed clinical social worker, licensed psychologist with health service provider designation, licensed senior psychological examiner, or licensed psychiatrist, who has been licensed at least five (5) years and who takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing.

**Authority:** *T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, 63-22-117, and 63-22-120.*

Rule 0450-1-.02, Scope of Practice, is amended by deleting the introductory sentence in its entirety and is further amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (3) in its entirety, and is further amended by renumbering paragraphs (4) and (5) as paragraphs (3) and (4), so that as amended, the new paragraphs (1) and (2) shall read:

- (1) The following shall be considered necessary when addressing the scope of practice for professional counselors:
- (a) Assisting an individual, through the counseling relationship, in a manner intended to facilitate normal human growth and development, using a combination of mental health and human development principles, methods and techniques, to achieve mental, emotional, physical, social, moral, educational, spiritual and/or career development and adjustment through the lifespan.
  - (b) Rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, techniques, methods or procedures of the counseling profession, including appraisal activities, counseling, consulting and referral activities. Nothing in this section shall be construed to permit the treatment of any mental, emotional or adjustment disorder other than marital problems, parent-child problems, child and adolescent antisocial behavior, adult antisocial behavior, other specified family circumstances, other interpersonal problems, phase of life problems, other life circumstance problems, occupational problems, and uncomplicated bereavement.
  - (c) Selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, achievements, or interests, which are used to understand, measure or facilitate such individual's normal human growth and development, but shall not include the use of projective techniques in the assessment of personality, nor the use of psychological or clinical tests designed to identify or classify abnormal or pathological human behavior, nor the use of individually administered intelligence tests. Consistent with each counselor's formal education and training, licensed or certified professional counselors may administer and utilize appropriate assessment instruments which measure and/or diagnose problems and/or dysfunctions within the context of human growth and development as part of the counseling process or in the development of a treatment plan.
- (2) In addition to the provisions of paragraph (1), the following shall be considered necessary when addressing the scope of practice for professional counselors as a mental health service provider:
- (a) Facilitate human development and adjustment throughout the life span;
  - (b) Prevent, diagnose, and treat mental, emotional or behavioral disorders and associated disorders which interfere with mental health;

- (c) Conduct assessments and diagnoses for the purpose of establishing treatment goals and objectives within the limitations prescribed in § 63-22-150(1); and
- (d) Plan, implement, and evaluate treatment plans using counseling treatment interventions. “Counseling treatment interventions” means the application of cognitive, affective, behavioral and systemic counseling strategies which include principles of development, wellness, and pathology that reflect a pluralistic society. Nothing in this definition shall be construed to permit the performance of any act which licensed professional counselors designated as mental health service providers are not educated and trained to perform, nor shall it be construed to permit the designation of testing reports as “psychological.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and 63-22-150.

Rule 0450-1-.10, Supervision, Post-Masters, is amended by deleting paragraph (1) and subparagraph (5) (d) in their entirety and substituting instead the following language, so that as amended, the new paragraph (1) and the new subparagraph (5) (d) shall read:

- (1) Professional Counselor’s Supervision. Supervision required by this rule shall be a professional experience which is supervised by a currently Licensed Professional Counselor, Licensed Professional Counselor with Mental Health Service Provider designation, licensed marital and family therapist, licensed clinical social worker, licensed psychologist with health service provider designation, licensed senior psychological examiner, or licensed psychiatrist, pursuant to rule 0450-1-.01, who has been licensed at least five (5) years and who is providing ongoing, direct clinical review for the purpose of training or teaching and who monitors the performance of a person’s supervised interaction with a client and provides regular, documented, face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation.
- (5) (d) Supervisors for applicants pursuing designation as mental health service provider may be currently Licensed Professional Counselors with Mental Health Service Provider designation, licensed marital and family therapists, licensed clinical social workers, licensed psychiatrists, licensed senior psychological examiners, or licensed psychologists with health service provider designation, who have been licensed at least five (5) years and who are in good standing with their respective licensing boards and professional associations.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, 63-22-117, and 63-22-120.

Rule 0450-1-.12, Continuing Education, is amended by deleting subparagraph (7) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (7) (d) shall read:

- (7) (d) Any licensee or certificate holder who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (b) above may be subject to disciplinary action.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-108, and 63-22-110.

Rule 0450-2-.12, Continuing Education, is amended by deleting subparagraph (7) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (7) (d) shall read:

- (7) (d) Any licensee or certificate holder who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (b) above may be subject to disciplinary action.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-108, and 63-22-110.

Rule 0450-3-.01, Definitions, is amended by deleting paragraphs (3) and (13) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3) and (13) shall read:

- (3) Applicant – Any individual seeking licensure by the Board who has submitted an official application and paid the application fee.
- (13) Endorsement – The process of licensure which is governed by T.C.A. § 63-22-205 and Rule 0450-3-.05.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-203, 63-22-205, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.01, Definitions, is amended by deleting paragraphs (6), (7), and (23) in their entirety and renumbering the remaining paragraphs accordingly, and is further amended by adding the following language as new and appropriately numbered paragraphs, so that as amended, the new and appropriately numbered paragraphs shall read:

- ( ) License – Document issued to an applicant who successfully completes the licensure process. The license takes the form of an “artistically designed” license as well as other versions bearing an expiration date.
- ( ) Licensed Clinical Pastoral Therapist – A person who has met the qualifications for a licensed clinical pastoral therapist and holds a current, unsuspended or unrevoked certificate that has been lawfully issued by the Board.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-201, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.03, Necessity of Certification, is amended by deleting the words “certification” and “certified” wherever they are found and substituting instead the words “licensure” and “licensed.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.04, Qualifications for Certification, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1) and (2) but not their subparagraphs, and is further amended by deleting subparagraph (2) (b) but not its parts and substituting instead the following language, and is further amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new catchline, the new paragraphs (1) and (2) but not their subparagraphs, the new subparagraph (2) (b) but not its parts, and the new paragraph (3) shall read:

**0450-3-.04 QUALIFICATIONS FOR LICENSURE.**

- (1) Licensed Clinical Pastoral Therapist by Examination. Prior to submitting an application each of the following qualifications must be met by a candidate for licensed clinical pastoral therapist:
- (2) Licensed Clinical Pastoral Therapist by Endorsement. Individuals seeking licensure by endorsement must meet the following qualifications under subparagraph (a) or (b).

- (2) (b) Certified as a clinical member of AAPC.
- (3) Clinical Pastoral Therapist by certain professional experience or by licensure in certain other professions. Until January 1, 2006, the Board will license as a clinical pastoral therapist any applicant who fulfills at least one (1) of the following requirements:
  - (a) Currently certified as a clinical pastoral therapist. Such certification must be lawfully issued by the Board and not be suspended or revoked;
  - (b) Documents, as provided in part 0450-3-.05 (4) (e) 1., satisfaction of the requirements of T.C.A. § 63-22-203(1)-(4);
  - (c) Documents, as provided in part 0450-3-.05 (4) (e) 2., current active status as a fellow or diplomate of AAPC and being actively engaged in the practice of pastoral psychotherapy for at least five (5) years prior to January 1, 2003.
  - (d) Documents, as provided in part 0450-3-.05 (4) (e) 3., having received a graduate theological degree from a recognized educational institution and being currently licensed in Tennessee as a psychologist designated as a health service provider, a professional counselor designated as a mental health service provider, a marital and family therapist, a clinical social worker, or an alcohol and drug abuse counselor, and, in addition, documents being actively engaged in the practice of clinical pastoral therapy for at least five (5) years prior to January 1, 2003.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-201, 63-22-203, 63-22-205, 63-22-206, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.05, Procedures for Certification, is amended by deleting the word “certification” wherever it is found in subparagraphs (1) (c), (1) (f), (1) (q), (2) (c), (2) (l), (3) (c), (3) (k), (4) (c) and (4) (j), and substituting instead the word “licensure.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.05, Procedures for Certification, is amended by deleting the catchline and the introductory sentence in their entirety and substituting instead the following language, and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraphs (2) (e) and (4) (e) in their entirety and substituting instead the following language, so that as amended, the new catchline, the new introductory sentence, the new paragraph (2) but not its subparagraphs, and the new subparagraphs (2) (e) and (4) (e) shall read:

**0450-3-.05 PROCEDURES FOR LICENSURE.** To become licensed as a clinical pastoral therapist in Tennessee a person must comply with the following procedures and requirements.

- (2) Clinical Pastoral Therapist by Endorsement if Certified as a Clinical Member of AAPC.
- (2) (e) An applicant shall cause the AAPC to send documentation that he is certified as a clinical member of the AAPC and that his membership is in good standing.
- (4) (e) An applicant shall submit documentation of at least one (1) of the following:
  - 1. Completion of educational requirements and supervised counseling experience as required in subparagraph 0450-3-.04 (3) (b).



- (i) It is the applicant's responsibility to request a graduate transcript from his degree granting institution, pursuant to T.C.A. § 63-22-203, be submitted directly from the school to the Board's Administrative Office. The institution granting the degree must be accredited, pursuant to T.C.A. § 63-22-201(9), at the time the degree was granted. The transcript must show that the degree has been conferred and carry the official seal of the institution and reference the name under which the applicant has applied for certification. The transcript must show at least 120 graduate semester hours, pursuant to T.C.A. § 63-22-203(3)(A). The educational requirements contained in this rule must be completed prior to the date of application for licensure.
  - (ii) An applicant shall complete and submit the worksheet form for reporting course work.
  - (iii) An applicant shall submit evidence of a practicum consisting of at least one (1) unit of full-time clinical pastoral education in a program accredited by the Association for Clinical Pastoral Education.
  - (iv) An applicant shall submit evidence of an internship consisting of at least two (2) years of clinical pastoral therapy training in an approved training program.
  - (v) An applicant shall submit evidence of a minimum of one thousand four hundred (1,400) hours of pastoral therapy with individuals, couples, families and/or while receiving a minimum of two hundred seventy (270) hours of supervision of such therapy with an approved supervisor.
2. Active status as a fellow or diplomate of AAPC and actively engaged in the practice of pastoral psychotherapy for at least five (5) years prior to January 1, 2003 as required in subparagraph 0450-3-.04 (3) (c) – Such documentation shall include two (2) affidavits signed by licensed or certified mental health professionals, attesting to the applicant's practice of pastoral psychotherapy.
  3. Completion of educational requirements, licensure requirements, and clinical pastoral therapy experience as required in subparagraph 0450-3-.04 (3) (d).
    - (i) Documentation of a graduate theological degree.
    - (ii) An applicant shall submit a copy of his original Tennessee certificate or license as a psychologist designated as a health service provider, a professional counselor designated as a mental health provider, a marital and family therapist, a clinical social worker, or an alcohol and drug abuse counselor, or an applicant must submit a copy of his renewal certificate.
    - (iii) An applicant must submit documentation that he has been actively engaged in the practice of clinical pastoral therapy for at least five (5) years prior to January 1, 2003. Such documentation shall include two (2) affidavits signed by certified mental health professionals, attesting to the applicant's period of service as a clinical pastoral therapist or pastoral counselor.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-205, 63-22-206, and Public Chapter 250 of the Public Acts of 2003.



Rule 0450-3-.06, Fees, is amended by deleting the words “certification” and “certificate” wherever they are found in subparagraphs (1) (a), (1) (b), and (4) (b), and substituting instead the words “licensure” and “license.”

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.06, Fees, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e) shall read:

- (1) (e) Renewal Fee – a fee to be paid by all licensees. This fee also applies to individuals who reactivate a retired or lapsed license.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.07, Application Review, Approval, and Denial, is amended by deleting the words “certification” and “certificate” wherever they are found in subparagraphs (3) (a), (3) (c) and (3) (d), and paragraphs (5), (6) and (8), and substituting instead the words “licensure” and “license.”

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.08, Examination, is amended by deleting the words “certification,” “certified,” and “certificate” wherever they are found in the introductory sentence, subparagraph (1) (a), and paragraphs (2) and (3), and substituting instead the words “licensure,” “licensed,” and “license.”

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.08, Examination, is amended by deleting subparagraph (5) (b) in its entirety and substituting instead the following language, and is further amended by adding the following language as (5) (c), so that as amended, the new subparagraphs (5) (b) and (5) (c) shall read:

- (5) (b) An applicant will be notified in writing by certified mail of the results of the appeal. In acting on an appeal, the Board may take such action as it deems appropriate, including issuance of a license where the Board determines that the applicant has demonstrated the required competence. If the applicant does not concur with the finding of the Board, the applicant may proceed pursuant to Rule 0450-3-.07(3).
- (5) (c) If an appeal is denied, the applicant shall have the right to request a contested case hearing. Such request must be in writing and submitted to the Board within thirty (30) days of receipt of the notice from the Board.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-203, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.09, Renewal of Certificate, is amended by deleting the words “certificate,” “certificate holder’s,” “certificate holders,” “certificate holder,” and “certificates” wherever they are found and substituting instead the words “license,” “licensee’s,” “licensees,” “licensee,” and “licenses.”

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.11, Retirement and Reactivation of Certificate, is amended by deleting the words “certificate,” “certified,” “certification holders,” and “certification” wherever they are found and substituting instead the words “license,” “licensed,” “licensees,” and “licensure.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.12, Continuing Education, is amended by deleting the words “certificates and/or licenses,” “licensed or certified,” “license or certificate,” “certification,” “certificate,” “certificate holder,” and “licensee or certificate holder” wherever they are found and substituting instead the words the words “licenses,” “licensed,” and “license,” “licensure,” “license,” “licensee,” and “licensee.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.12, Continuing Education, is amended by deleting subparagraph (7) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (7) (d) shall read:

- (7) (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (b) above may be subject to disciplinary action.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-108, and 63-22-110.

Rule 0450-3-.13, Professional Ethics, is amended by deleting the words “certificate holders” and “certificate holder” wherever they are found in paragraph (2) and substituting instead the words “licensees” and “licensee.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.15, Disciplinary Actions and Civil Penalties, is amended by deleting the words “certification,” “certificate,” and “certified” wherever they are found in subparagraphs (1) (d), (1) (e), (1) (f) and (2) (b), and substituting instead the words “licensure,” “license,” and “licensed.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.16, Duplicate Certificate, is amended by deleting the words “certificate” and “certificate holder” wherever they are found and substituting instead the words “license” and “licensee.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.17, Change of Address and/or Name, is amended by deleting the word “certificate” wherever it is found and substituting instead the word “license.”

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

Rule 0450-3-.19, Board Officers, Consultants, Records, Complaints, and Declaratory Orders, is amended by deleting the words “certified practitioner” in subparagraph (3) (d) and substituting instead the word “licensee.”

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, and Public Chapter 250 of the Public Acts of 2003.

The notice of rulemaking set out herein was properly filed in the Department of State on the 1st day of August, 2003. (08-01)

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

There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, acting on behalf of the Tennessee Solid Waste Disposal Control Board, to consider the adoption and promulgation of rules and amendments to rules (revision "x") pursuant to the Tennessee Code Annotated Sections 68-212-106, 68-212-107, 68-212-108, 68-212-109, 68-212-110 and 68-212-114; the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated, Section 68-211-101 et seq; the Tennessee Environmental Protection Fund Act, Tennessee Code Annotated, Section 68-203-101 et seq; the Used Oil Collection Act of 1993, Tennessee Code Annotated, Section 68-211-1001 et seq and the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-101 et seq. 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 5<sup>th</sup> Floor Conference Room, L & C Tower, 401 Church Street, Nashville, Tennessee at 1:00 PM CDT on October , 21, 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 days prior to October 21, 2003 (or the date such party intends to review such filings), to allow time to provide such aid or services. 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).

**SUMMARY OF PROPOSED RULES**

This rulemaking includes multiple and various additions, deletions, and modifications to Rule Chapter 1200-1-11 Hazardous Waste Management. Many of these changes are proposed in response to revisions and additions published in Federal Registers that the U. S. Environmental Protection Agency (EPA) made between July 1, 2002 and June 30, 2003 to the corresponding Federal Regulations. These amendments are intended to make the State's Regulations equivalent to their Federal counterparts. They include certain technical corrections, definitions, housekeeping changes, clarifications, reference changes, typos, and other corrections.

A conditional exclusion from the regulatory definition of solid waste for hazardous secondary materials that are recycled and used to make zinc fertilizers is being established. Zinc fertilizers made from electric arc furnace dust must comply with land disposal restrictions (LDR) treatment standards for the hazardous waste contained in the fertilizers unless the manufacturer meets the new, more stringent contaminant limits. Macroencapsulation is being designated as the required treatment prior to land disposal for new waste subcategories of radioactively-contaminated cadmium, mercury and silver containing batteries.

Housekeeping changes include deleting Rule Chapter 1200-1-10 Administrative Procedures which is obsolete and may conflict with the Uniform Administrative Procedures Act. Regulatory language regarding Petitions for Equivalent Testing or Analytical Methods and Petitions to Exclude a Waste Produced at a Particular Facility (“delisting”) is being removed, leaving these responsibilities involving technical research with EPA. Hazardous Waste Transfer Facilities are being required to obtain an Installation Identification Number, maintain a log of all shipments and comply with personnel training and security rules. Transporter permits are being moved to a calendar year basis versus March 1 of each year. “Original” Transporter Permits will be issued for and will be required to be kept in each hazardous waste transporter vehicle versus a “copy” of a Permit. Fees in Rule 1200-1-11-.08 will be applicable to Transfer Facilities as appropriate and alternative methods of payment other than by check or money order may be used if approved by the Commissioner. Half-fees are being eliminated and the “largest” constructed design capacity amount is the number that should be used for calculating the category fees. Fees are being clarified in Rule 1200-1-11-.08(4)(b)1. Further, the definition of “Commercial Facility” in Rule 1200-1-14-.01(2)(a) is being modified to be equivalent to the statutory definition.

### OTHER INFORMATION

The Division has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review only at the Tennessee Department of Environment and Conservation’s (TDEC’s) Environmental Assistance Centers located as follows:

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

Cookeville Environmental Assistance Center  
1221 South Willow Avenue  
Cookeville, TN 38506  
(931) 432-4015/ 1-888-891-8332

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

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

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

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

Nashville Environmental Assistance Center  
711 R. S. Gass Blvd.  
Nashville, TN 37243-1550  
(615) 687-7000/1-888-891-8332

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

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

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

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

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

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

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

Clarksville-Montgomery County Public Li-  
brary  
350 Pageant Lane, Suite 501  
Clarksville, TN 37040-0005  
(931) 648-8826

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

Kingsport Public Library & Archives  
400 Broad Street  
Kingsport, TN 37660-4292  
(423) 229-9489

The "DRAFT" rules may also be accessed for review using:

<http://www.state.tn.us/environment/swm/swmppo/rules902.htm>

Copies are also available for review at the Nashville Central Office (see address below). They may be purchased at the central office location only (\$75.00 per copy if picked up or \$84.00 per copy if mailed, which includes shipping and handling, payable in advance).

Tennessee Department of Environment and Conservation  
Division of Solid Waste Management  
5th Floor, L & C Tower  
401 Church Street  
Nashville, TN 37243-1535  
(615) 532-0780

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Solid Waste Management; Tennessee Department of Environment and Conservation; Attention: Mr. Gerald Ingram; 5th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0850 or FAX 615-532-0886. However, such written comments must be received by the Division by 4:30 PM CST, November 4, 2003 in order to assure consideration. For further information, contact Mr. Gerald Ingram at the above address or telephone number.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of August, 2003. (08-25)

**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 amendments to Rule 1200-1-13, Inactive Hazardous Substance Site Remedial Action Program, pursuant to T.C.A. Section 68-212-201 et seq. 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 Tennessee Department of Environment and Conservation, Ruth Neff Conference Room 17A, 17<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, Tennessee on October 31, 2003, at 10:00 a.m. Written comments will be considered if received by the close of business, November 7, 2003, in the office of Steve Goins, Division of Superfund, 401 Church Street, L & C Annex, 4<sup>th</sup> Floor, Nashville, TN 37243-1538. 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, 7<sup>th</sup> 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 CHANGES**

The Tennessee Department of Environment and Conservation, Division of Superfund is proposing amendments to Rule 1200-1-13. Included in the amendments are changes to the following:

Rule 1200-1-13-.03(1)(f)(1) Remedial Action Fund Fees is amended by deleting it in its entirety and substituting the following:

1. All remedial action fees from in-state generators shall be paid to the Department on or before March 1 of each year.

Rule 1200-1-13-.03(1)(f)(3) Remedial Action Fund Fees is amended by deleting it in its entirety and substituting the following:

3. Transporters issued a transporter permit for any year prior to 1995 shall pay the assessed fee on or before the March 1<sup>st</sup> that immediately follows the issuance of the permit, if the fee was not paid upon issuance.

For copies of the complete text of the proposed rules, please contact Steve Goins, Division of Superfund, 401 Church Street, 4<sup>th</sup> Floor, L & C Annex, Nashville, TN 37243-1538, (615)532-8599.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of August, 2003. (08-23)

**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 Tennessee Department of Environment and Conservation, Chattanooga Environmental Assistance Center, Main Auditorium, 540 McCallie Street, Chattanooga, Tennessee on October 23, 2003, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

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

**AMENDMENTS**

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

<u>Site Number</u>	<u>Site Name</u>
Hamilton County (33)	
33-541	Hamill Road Dump Chattanooga, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of August, 2003. (08-20)

**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 Tennessee Department of Environment and Conservation Jackson Environmental Assistance Center, Conference Room, 362 Carriage House Drive, Jackson, TN 38305 on October 21, 2003, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

**SUBSTANCE OF PROPOSED RULES**

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

**AMENDMENTS**

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

<u>Site Number</u>	<u>Site Name</u>
Madison County (57)	
57-516	Noma/ITT Site Jackson, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of August, 2003. (08-21)



**DEPARTMENT OF HEALTH - 1200  
DIVISION OF HEALTH RELATED BOARDS  
BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS**

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 6<sup>th</sup> day of November, 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 1200-30-1-.04, Qualifications for Licensure, is amended by deleting part (1) (d) 4. in its entirety and is further amended by adding the following language as new subparagraphs (1) (e) and (2) (d):

- (1) (e) An applicant shall successfully complete the examinations as required in Rule 1200-30-1-.08. The applicant shall also provide to the Board an authorization for release of examination scores along with his/her application.
- (2) (d) An applicant shall successfully complete the jurisprudence examination as required in Rule 1200-30-1-.08.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-24-605, and 68-24-606.

Rule 1200-30-1-.05, Licensure Process, is amended by deleting part (1) (a) 11. in its entirety and substituting instead the following language, and is further amended by adding the following language as new part (1) (b) 12., so that as amended, the new parts (1) (a) 11. and (1) (b) 12. shall read:

- (1) (a) 11. An applicant shall successfully complete the examinations as required in Rule 1200-30-1-.08. The applicant shall be admitted to the first regularly scheduled written exam that occurs forty-five (45) days or more after the applicant has been approved.

- (1) (b) 12. An applicant shall successfully complete the jurisprudence examination as required in Rule 1200-30-1-.08.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-24-605, and 68-24-606.

Rule 1200-30-1-.08, Examinations, is amended by deleting the introductory sentence in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (3) and renumbering the remaining paragraphs accordingly, so that as amended, the new introductory sentence and the new paragraph (3) shall read:

**1200-30-1-.08 EXAMINATIONS.** In addition to having filed an application, an individual seeking licensure by examination shall be required to successfully complete the Board's written, oral, and jurisprudence examinations. In addition to having filed an application, an individual seeking licensure by reciprocity shall be required to successfully complete the Board's jurisprudence examination.

- (3) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
- (a) The Board shall include a jurisprudence examination with all applications for licensure that are mailed from the Board's administrative office, or the applicant may obtain the jurisprudence examination from the Board's Internet web page that can be accessed at Tennessee.gov.
  - (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is returned to the Board's administrative office.
  - (c) There is no fee for the jurisprudence examination.
  - (d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of alcohol and drug abuse counselors, and the NAADAC Code of Ethics. Copies of the applicable statutes, regulations, and the NAADAC Code of Ethics are available upon request from the Board's administrative office.
  - (e) The format of the examination shall be "open-book."
  - (f) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-24-605, and 68-24-606.

Rule 1200-30-1-.08, Examinations, is amended by adding the following language to newly numbered paragraph (4) as new subparagraph (4) (c) and is further amended by deleting newly numbered paragraph (5) in its entirety and substituting instead the following language, so that as amended the new subparagraph (4) (c) and the new paragraph (5) shall read:

- (4) (c) Jurisprudence Examination
- 1. Applicants who fail to successfully complete the jurisprudence examination shall continue to retake the examination until it has been successfully completed before the application will be presented to the Board for review.
  - 2. It is not required that an applicant repeat the written or oral examinations in order to repeat the jurisprudence examination.

- (5) If an applicant neglects, fails, or refuses to take any of the required examinations or fails to successfully complete the examinations within twelve (12) months after being approved, the application will be deemed abandoned. Such applicant may thereafter make a new application accompanied by the required fee. The applicant shall meet the requirements in effect at the time of the new application.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-24-605, and 68-24-606.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of August, 2003. (08-27)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 16<sup>th</sup> 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 Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

**SUBSTANCE OF PROPOSED RULES**

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

**AMENDMENTS**

Rule 1200-8-1-.06, Basic Hospital Functions, is amended by adding the following language as new subparagraph (4)(h) and re-numbering the remaining subparagraphs appropriately, so that as amended, the new subparagraph (4)(h) shall read:

- (4) (h) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. the deceased was a patient at a hospital as defined by T.C.A. §68-11-201(23);
2. death was anticipated, and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present with the deceased at the place of death;
3. the nurse is licensed by the state; and
4. the nurse is employed by the hospital providing services to the deceased.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

Rule 1200-8-1-.11, Records and Reports, is amended by adding the following language as new paragraph (6) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (6) shall read:

- (6) Hospitals that fail to file their joint annual report timely or that file a joint annual report that does not include all of the required data elements or includes data that does not pass the department's edits shall receive a deficiency from the department. Within ten (10) calendar days, the hospital shall be required to return a plan of correction indicating: how the deficiency will be corrected; the date upon which each deficiency will be corrected; what measures or systemic changes will be put place to ensure that the deficient practice does not recur; and how the corrective action will be monitored to ensure the deficient practice does not recur. Either failure to submit a plan of correction in a timely manner or a finding by the department that the plan of correction is unacceptable shall subject the hospital's license to possible disciplinary action.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, and 68-11-310.

The notice of rulemaking set out herein was properly filed in the Department of State on the 11th day of August, 2003. (08-06)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 17<sup>th</sup> 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 Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

## **SUBSTANCE OF PROPOSED RULES**

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

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

#### **AMENDMENTS**

Rule 1200-8-6-.03, Disciplinary Procedures, is amended by adding the following language as new paragraphs (3) thru (9) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraphs (3) thru (9) shall read:

- (3) The Board shall have the authority to place a facility on probation. To be considered for probation, a facility must have had at least two (2) separate substantiated complaint investigation surveys within six (6) months, where each survey had at least one deficiency cited at the level of substandard quality of care or immediate jeopardy, as those terms are defined at 42 CFR 488.301. None of the surveys can have been initiated by an unusual event or incident self reported by the facility.
  - (a) If a facility meets the criteria for probation, the board may hold a hearing at its next regularly scheduled meeting to determine if the facility should be placed on probation. Prior to initiating such a hearing, the board shall provide notice to the facility detailing what specific non-compliance the board had identified that the facility must respond to at the probation hearing.
  - (b) Prior to imposing probation, the board may consider and address in its findings all factors which deems relevant, including, but not limited to, the following:
    1. What degree of sanctions is necessary to ensure to immediate and continued compliance; and
    2. Whether the non-compliance was an unintentional error or omission, or was not fully within the control of the facility; and
    3. Whether the nursing home recognized the non-compliance and took steps to correct the identified issues, including whether the facility notified the department of the non-compliance either voluntarily or as required by state law or regulations; and
    4. The character and degree of impact of the non-compliance on the health, safety and welfare of the patient or patients in the facility; and
    5. The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the non-compliance; and
    6. The facility's prior history of compliance or non-compliance.

- (4) If the Board places a facility on probation, the facility shall detail in a plan of correction those specific actions, which when followed, will correct the non-compliance identified by the board.
- (5) During the period of probation, the facility must make reports on a schedule determined by the board. These reports must demonstrate and explain to the board how the facility is implementing the actions identified in its plan of correction. In making such reports, the board shall not require the facility to disclose any information protected as privileged and confidential under any state or federal law or regulation.
- (6) The Board is authorized at any time during the probation to remove the probational status of the facility's license, based upon information presented to it showing that the conditions identified by the board have been corrected and are reasonably likely to remain corrected.
- (7) The Board must rescind the probational status of the facility if it determines that the facility has complied with its plan of correction as submitted and approved by the board, unless the facility has additional non-compliance that warrants an additional term of probation as defined in T.C.A. §68-11-207(e)(1).
- (8) A single period of probation for a facility shall not extend beyond twelve (12) months. If the board determines during or at the end of the probation that the facility is not taking steps to correct non-compliance or otherwise not responding in good faith pursuant to the plan of correction, the board may take any additional action as authorized by law.
- (9) The hearing to place a facility on probation and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act.

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

Rule 1200-8-6-.04, Administration, is amended by adding the following language as new paragraph (11) and renumbering the remaining paragraphs appropriately, so that as amended, the new paragraph (11) shall read:

- (11) All nursing homes shall initiate a criminal background check on any person who is employed by the facility in a position which involves providing direct care to a resident or patient, prior to or within seven (7) days of employment.
  - (a) Any person who applies for employment in a position which involves providing direct patient care to a resident in such a facility shall consent to:
    1. Provide past work and personal references to be checked by the nursing home; and/or
    2. Agree to release and use of any and all information and investigative records necessary for the purpose of verifying whether the individual has been convicted of a criminal offense in the state of Tennessee, to either the nursing home or its agent, to any agency that contracts with the state of Tennessee, to any law enforcement agency, or to any other legally authorized entity; and/or
    3. Supply a fingerprint sample and submit to a state criminal history records check to be conducted by the Tennessee Bureau of Investigations, or a state and federal criminal history records check to be conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation; and/or

4. Release any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.
  - (b) A nursing home shall not disclose criminal background check information obtained to a person who is not involved in evaluating a person's employment, except as required or permitted by state or federal law.
  - (c) Any costs incurred by the Tennessee Bureau of Investigation, professional background screening organization, law enforcement agency, or other legally authorized entity, in conducting such investigations of such applicants may be paid by the nursing home, or any agency that contracts with the state of Tennessee requesting such investigation and information, or the individual who seeks employment or is employed. Payment of such costs to the Tennessee Bureau of Investigation are to be made in accordance with T.C.A. §§38-6-103 and 38-6-109. The costs of conducting criminal background checks shall be an allowable cost under the state Medicaid program, if paid for by the nursing home.
  - (d) Criminal background checks are also required by any organization, company, or agency that provides or arranges for the supply of direct care staff to any nursing home licensed in the state of Tennessee. Such company, organization, or agency shall be responsible for initiating a criminal background check on any person hired by that entity for the purpose of working in a nursing home, and shall be required to report the results of the criminal background check to any facility in which the organization arranges the employee to work, upon request by a facility.
  - (e) A nursing home that declines to employ or terminates a person based upon criminal background information provided to the facility shall be immune from suit by or on behalf of that person for the termination of or the refusal to employ that person.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-225, 68-11-256, and 68-11-906.

Rule 1200-8-25-.05, Admissions, Discharges, and Transfers, is amended by deleting subparagraph (3)(d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3)(d) shall read:

- (3) (d) requires the routine administration of oxygen; provided, however, with respect to this requirement, no such documented history of self-care for a person's medical condition for at least one (1) year shall be required for the continued stay of an assisted living facility resident.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of August, 2003. (08-08)



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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 16<sup>th</sup> 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 Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

**SUBSTANCE OF PROPOSED RULES**

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

**CHAPTER 1200-8-18  
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL  
TREATMENT FACILITIES**

**CHAPTER 1200-8-21  
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL  
NARCOTIC TREATMENT FACILITIES**

**CHAPTER 1200-8-22  
ALCOHOL AND OTHER DRUGS OF ABUSE HALFWAY HOUSE TREATMENT FACILITIES**

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

**AMENDMENTS**

Rule 1200-8-17-.06, Basic Services, is amended by adding the following language as new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii), so that as amended, the new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii) shall read:

- (i) An LPN or other licensed medical professional staff of the facility shall provide tuberculosis assessments if provided by facility.



- (ii) Clients receiving services of less than nine (9) hours per week in an outpatient setting should be offered a TB assessment and a TB skin test. If the client refuses the assessment and/or test, refusal of such shall be documented in the client's record. The client may be admitted and continue in treatment; however, any client exhibiting TB symptoms should be referred to the Health Department or a private physician and entrance into the program should be postponed until a complete assessment for TB disease is completed.
- (iii) Clients receiving services of nine (9) or more hours per week in an outpatient setting, and clients receiving services in methadone, residential rehabilitation, and halfway house settings must be assessed for TB symptoms and should be tested for TB infection with a tuberculin skin test. If the client refuses a skin test, he/she may be admitted and receive treatment if the assessment indicates the client does not have TB symptoms. Clients assessed as having TB symptoms must be referred for appropriate medical evaluation and treatment if indicated.

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

Rule 1200-8-18-.06, Basic Services, is amended by adding the following language as new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii), so that as amended, the new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii) shall read:

- (i) An LPN or other licensed medical professional staff of the facility shall provide tuberculosis assessments if provided by facility.
- (ii) Clients receiving services of less than nine (9) hours per week in an outpatient setting should be offered a TB assessment and a TB skin test. If the client refuses the assessment and/or test, refusal of such shall be documented in the client's record. The client may be admitted and continue in treatment; however, any client exhibiting TB symptoms should be referred to the Health Department or a private physician and entrance into the program should be postponed until a complete assessment for TB disease is completed.
- (iii) Clients receiving services of nine (9) or more hours per week in an outpatient setting, and clients receiving services in methadone, residential rehabilitation, and halfway house settings must be assessed for TB symptoms and should be tested for TB infection with a tuberculin skin test. If the client refuses a skin test, he/she may be admitted and receive treatment if the assessment indicates the client does not have TB symptoms. Clients assessed as having TB symptoms must be referred for appropriate medical evaluation and treatment if indicated.

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

Rule 1200-8-21-.05, Admissions, Discharges and Transfers, is amended by adding the following language as new items (2)(a)1.(v)(I), (2)(a)1.(v)(II), and (2)(a)1.(v)(III), so that as amended, the new items (2)(a)1.(v)(I), (2)(a)1.(v)(II), and (2)(a)1.(v)(III) shall read:

- (i) An LPN or other licensed medical professional staff of the facility shall provide tuberculosis assessments if provided by facility.

- (ii) Clients receiving services of less than nine (9) hours per week in an outpatient setting should be offered a TB assessment and a TB skin test. If the client refuses the assessment and/or test, refusal of such shall be documented in the client's record. The client may be admitted and continue in treatment; however, any client exhibiting TB symptoms should be referred to the Health Department or a private physician and entrance into the program should be postponed until a complete assessment for TB disease is completed.
- (iii) Clients receiving services of nine (9) or more hours per week in an outpatient setting, and clients receiving services in methadone, residential rehabilitation, and halfway house settings must be assessed for TB symptoms and should be tested for TB infection with a tuberculin skin test. If the client refuses a skin test, he/she may be admitted and receive treatment if the assessment indicates the client does not have TB symptoms. Clients assessed as having TB symptoms must be referred for appropriate medical evaluation and treatment if indicated.

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

Rule 1200-8-22-.06, Basic Services, is amended by adding the following language as new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii), so that as amended, the new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii) shall read:

- (i) An LPN or other licensed medical professional staff of the facility shall provide tuberculosis assessments if provided by facility.
- (ii) Clients receiving services of less than nine (9) hours per week in an outpatient setting should be offered a TB assessment and a TB skin test. If the client refuses the assessment and/or test, refusal of such shall be documented in the client's record. The client may be admitted and continue in treatment; however, any client exhibiting TB symptoms should be referred to the Health Department or a private physician and entrance into the program should be postponed until a complete assessment for TB disease is completed.
- (iii) Clients receiving services of nine (9) or more hours per week in an outpatient setting, and clients receiving services in methadone, residential rehabilitation, and halfway house settings must be assessed for TB symptoms and should be tested for TB infection with a tuberculin skin test. If the client refuses a skin test, he/she may be admitted and receive treatment if the assessment indicates the client does not have TB symptoms. Clients assessed as having TB symptoms must be referred for appropriate medical evaluation and treatment if indicated.

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

Rule 1200-8-23-.06, Basic Services, is amended by adding the following language as new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii), so that as amended, the new subparts (1)(a)2.(i), (1)(a)2.(ii), and (1)(a)2.(iii) shall read:

- (i) An LPN or other licensed medical professional staff of the facility shall provide tuberculosis assessments if provided by facility.

- (ii) Clients receiving services of less than nine (9) hours per week in an outpatient setting should be offered a TB assessment and a TB skin test. If the client refuses the assessment and/or test, refusal of such shall be documented in the client's record. The client may be admitted and continue in treatment; however, any client exhibiting TB symptoms should be referred to the Health Department or a private physician and entrance into the program should be postponed until a complete assessment for TB disease is completed.
- (iii) Clients receiving services of nine (9) or more hours per week in an outpatient setting, and clients receiving services in methadone, residential rehabilitation, and halfway house settings must be assessed for TB symptoms and should be tested for TB infection with a tuberculin skin test. If the client refuses a skin test, he/she may be admitted and receive treatment if the assessment indicates the client does not have TB symptoms. Clients assessed as having TB symptoms must be referred for appropriate medical evaluation and treatment if indicated.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 4-5-206, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, 68-11-305, and 68-11-308.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of August, 2003.  
(08-04)

**THE TENNESSEE DEPARTMENT OF HEALTH - 1200  
BUREAU OF HEALTH SERVICES ADMINISTRATION  
NUTRITION SERVICES SECTION**

There will be a public hearing before the Department of Health, Nutrition Services Section, to receive comments concerning amendments to the Special Supplemental Nutrition Program For Women, Infants and Children Rules, pursuant to Tennessee Code Annotated § 68-1-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-201, et seq. and will take place in the Nutrition Services Section Conference Room, 5<sup>th</sup> Floor of the Cordell Hull Building, located at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee, 37247, at 1:00 P.M., Central Time, on the 22nd day of October, 2003.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of Health 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 Department of Health to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Health's ADA Coordinator, in the Division of Human Resources, located on the 11th Floor of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee, 37247-0103 or call(615) 741-6350.

For a copy of the entire text of this notice of rulemaking hearing, please contact: Jerry Orenstein, Department of Health, Nutrition Services Section, 5th Floor, Cordell Hull Building, 425 5<sup>th</sup> Avenue North, Nashville, Tennessee 37247-5310, (615) 532-8177.

**SUBSTANCE OF PROPOSED RULES**

**CHAPTER 1200-15-2  
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM  
FOR WOMEN, INFANTS AND CHILDREN**

Rule 1200-15-2-.01, Definitions, is amended by deleting subparagraph (1)(q) in its entirety and replacing it with the following language:

- (q) “Grocery store” means a retail store, open to the general public, that derives the majority (i.e., greater than 50%) of its annual total gross sales from staple foods. Its purpose is to provide Program participants with a selection of Program approved foods that meets the Program’s minimum stock requirement. It must also offer a full market basket of foods to provide the opportunity for price comparison shopping and for nutrition information comparison. At least one other form of payment (i.e., bank debit or credit card, personal check, or cash) must be accepted in addition to Food Stamp Program transactions and Tennessee WIC vouchers.

*Authority:* T.C.A. §§ 68-1-106 and 4-5-201 *et seq.*

Rule 1200-15-2-.01, Definitions, is amended by adding a new subparagraph (1)(jj), which reads as follows, and renumbering the remaining subparagraphs accordingly:

- (jj) “Staple Foods” means the variety of foods carried by an authorized WIC grocery store consisting of, but not limited to, infant formula and other baby food products, eggs, dairy products, bread and bakery products, pastas, fresh produce and vegetables, frozen and canned fruits and vegetables, frozen and canned juices, seafood, meat and poultry. Staple foods do not include any prepared foods or accessory foods such as candy, condiments, spices, tea, coffee, cocoa, or carbonated and uncarbonated drinks.

*Authority:* T.C.A. §§68-1-106 and 4-5-201 *et seq.*

Rule 1200-15-2-.05, Voucher Transactions and Redemption, is amended by deleting paragraph (5) in its entirety and replacing it with the following language:

- (5) The participant, parent/caretaker, or proxy must transact vouchers within the month for which they are valid. Vouchers must be submitted for redemption within the time period specified in 7 CFR Part 246 and the WIC Vendor Agreement, as may be amended from time to time.

*Authority:* T.C.A. §§68-1-106 and 4-5-201 *et seq.*

Rule 1200-15-2-.07, Vendor Agreements, is amended by deleting paragraph (2) in its entirety and replacing it with the following language:

- (2) A potential WIC vendor must be a grocery store or pharmacy as defined in 1200-15-2-.01, Definitions, which operates at a permanent fixed location. Each such location requires a separate vendor agreement. Apart from initial authorization, a grocery store must also be actively participating in, and currently conducting, Food Stamp Program transactions in accordance with the regulations in 7 CFR Part 278 before authorization by the Department as a WIC vendor. Any authorized WIC vendor, participating in the WIC Program as of January 1, 2004, who does not meet these requirements shall have up to six (6) months to comply. Failure to comply shall result in termination of the WIC Vendor Agreement. The Program re-

quires a WIC vendor, at both initial and subsequent authorizations, not be under a disqualification or civil money penalty issued by the Food Stamp Program, another State WIC Agency, or the Tennessee WIC Program, unless denying such authorization would create an undue hardship for participants attempting to transact vouchers. Such decision related to hardship shall rest solely with the Department per 7 CFR Part 276.18(a)(iii)(B) which prohibits the WIC vendor's right to appeal. The Department does not require pharmacies to participate in the Food Stamp Program. If, however, a pharmacy was previously disqualified from the Food Stamp Program or is currently authorized and it has been issued a civil money penalty, it must inform the Department when applying for authorization as a WIC vendor.

**Authority:** *T.C.A. §§68-1-106 and 4-5-201 et seq.*

Rule 1200-15-2-.07, Vendor Agreements, is amended by deleting paragraph (4) in its entirety and replacing it with the following language:

- (4) An incomplete or inaccurate application shall be returned within fifteen (15) calendar days of its receipt, unless the only item missing is the Food Stamp Authorization, which has been applied for but not received. The application shall be processed, but the vendor shall not be authorized until a copy of the Food Stamp Authorization has been provided. If the potential vendor does not resubmit a corrected application within fifteen (15) calendar days from receipt of the return letter, the application shall be considered denied. Receipt of the return letter shall be presumed to occur within three (3) business days of the date of mailing unless undeniable proof of later receipt is presented. If a resubmitted application is returned two (2) additional times for being incomplete or inaccurate, it shall be considered denied. In each instance, when an application has been denied, a new application shall not be accepted for six (6) months from the date of the denial.

**Authority:** *T.C.A. §§68-1-106 and 4-5-201 et seq.*

Rule 1200-15-2-.07, Vendor Agreements, is amended by deleting paragraph (6) in its entirety and replacing it with the following language:

- (6) The Department has established appropriate criteria, including those described in paragraph (7) below, to use in the decision to determine authorization of a vendor. The potential vendor may not ask the Department for a hearing or administrative review regarding the appropriateness of these criteria, which include, but are not limited to: competitive price and price limitations, minimum variety and quantity of approved foods, business integrity, status of Food Stamp Program authorization, the majority of annual total gross sales being in staple food, and a history of Food Stamp Program transactions (except for initial authorization). However, the vendor may appeal a decision to deny authorization as a vendor as described in section 1200—15—2—.10, Appeals and Administrative Reviews. Pharmacies are exempt from the staple food requirement.

**Authority:** *T.C.A. §§68-1-106 and 4-5-201 et seq.*

Rule 1200-15-2-.07, Vendor Agreements, is amended by deleting paragraph (7) in its entirety and replacing it with the following language:

- (7) The application is subject to verification of the minimum stock requirement, competitive prices with other vendors of similar size in a peer group, and a positive compliance history with sanitation authorities. If the minimum stock is not available and/or competitive prices can not be verified during the Vendor Representative's first visit to the store's location, there will be a second unannounced visit within fifteen (15) calendar days. If the minimum stock requirement and/or verification of competitive prices are still

not met, the application will be considered denied and a new application will not be accepted again for six (6) months from the date of the denial. Pharmacies are exempt from minimum stock and competitive pricing requirements.

**Authority:** *T.C.A. §§68-1-106 and 4-5-201 et seq.*

Rule 1200-15-2-.08, Vendor Program Violations, subparagraph (6)(e), is amended by adding a new subpart 1., which reads as follows, and renumbering the remaining subparts accordingly:

1. providing false information on the “Vendor Application for Authorization to Participate in the Tennessee WIC Program”;

**Authority:** *T.C.A. §§68-1-106 and 4-5-201 et seq.*

Rule 1200-15-2-.08, Vendor Program Violations, the newly renumbered subpart(6)(e)2. is amended by deleting it in its entirety and replacing it with the following language:

2. providing false information on the WIC Grocer Price Report Card;

**Authority:** *T.C.A. §§68-1-106 and 4-5-201 et seq.*

Rule 1200-15-2-.10, Appeals and Administrative Reviews, subparagraph (2)(a), is amended by deleting subpart 1. in its entirety and replacing it with the following language:

1. denial of authorization: based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods or for requiring the majority of annual total gross sales to be derived from staple foods or on a determination that the vendor is attempting to circumvent a sanction;

**Authority:** *T.C.A. §§68-1-106 and 4-5-201 et seq.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of August, 2003. (08-26)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 10:30 a.m. (CDST) on the 17<sup>th</sup> 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 Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

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

## **SUBSTANCE OF PROPOSED RULES**

### **CHAPTER 1200-8-26**

#### **STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME HEALTH SERVICES**

### **CHAPTER 1200-8-29**

#### **STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT**

### **CHAPTER 1200-8-34**

#### **STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING PROFESSIONAL SUPPORT SERVICES**

## **AMENDMENTS**

Rule 1200-8-26-.01, Definitions, is amended by adding the following language as new subparagraph (20)(g), so that as amended, the new subparagraph (20)(g) shall read:

- (20) (g) Home health service does not include services provided in the home by a sole practice therapist, when such services are within the scope of the therapist's license and incidental to services provided by the sole practice therapist in the office. A sole practice therapist means a therapist licensed under Title 63, Chapter 13 or 17, who is in sole practice and not in a business arrangement with any other therapist or other healthcare provider. Sole practice therapists are not excluded from the requirements of professional support services.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, and 68-11-213.

Rule 1200-8-26-.01, Definitions, is amended by deleting paragraph (39) in its entirety and substituting instead the following language, so that as amended, the new paragraph (39) shall read:

- (39) Physician. A person currently licensed as such by the Tennessee Board of Medical Examinations or currently licensed by the Tennessee Board of Osteopathic Examination. For the purposes of defining "home health services" only, "physician" includes a podiatrist licensed under Title 63, Chapter 3, provided, that any home health service ordered is a follow-up to treatment provided to the patient by the podiatrist. A physician who is licensed to practice medicine, osteopathy or podiatry in a state contiguous to Tennessee may refer a patient residing in this state to a home care organization providing home health



services duly licensed under this chapter; however, this shall not be construed as authorizing an unlicensed physician to practice medicine in violation of T.C.A. §§63-6-201, 63-9-104 or 63-3-204, and such a physician shall have previously provided treatment to that patient, and shall have had an ongoing physician-patient relationship with the person for whom the referral is to be made.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, and 68-11-213.

Rule 1200-8-29-.01, Definitions, is amended by adding the following language as five (5), new, appropriately numbered paragraphs, so that as amended, the five (5), new, appropriately numbered paragraphs shall read:

- ( ) Assistive Technology Practitioner (ATP). Service providers primarily involved in evaluating the consumer's needs and training in the use of a prescribed wheeled mobility device.
- ( ) Assistive Technology Supplier (ATS). Service providers involved in the sale and service of commercially available wheeled mobility devices.
- ( ) Credentialed Wheeled Mobility Person. A health care professional licensed under Title 63 who has appropriately obtained the designation of ATS or ATP, meeting all requirements thereof, as established by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA); or an individual who has met the following requirements and provides to the home care organization providing prescribed wheeled mobility devices, where the individual is on staff:
  - (a) documentation to prove the completion of at least fifteen (15) hours of continuing education within the twelve (12) months immediately prior to July 1, 2004, and by June 30 of all subsequent years, in the field of seating and wheeled mobility, which may include, but is not limited to:
    1. Courses by health care professionals;
    2. Courses by health care associations;
    3. Courses by a college or university;
    4. Courses by manufacturers;
    5. In-Service training by manufacturers; or
    6. Attendance at symposia or conferences.
  - (b) Proof of at least one year's experience in the field of rehabilitation technology; and
  - (c) Three (3) recommendations from health care professionals licensed under Title 63 who can attest to the skills of the provider in seating and wheeled mobility.
- ( ) Evaluation. The determination and documentation of the physiological and functional factors that impact the selection of an appropriate seating and wheeled mobility device.
- ( ) Wheeled Mobility Device. A wheelchair or wheelchair and seated positioning system prescribed by a physician and required for use by the patient for a period of six (6) months or more. The following Medicare wheelchairs base codes are exempt: K0001, K0002, K0003, K0004, K0006.



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

Rule 1200-8-34-.02, Licensing Procedures, is amended by deleting subparagraph (2)(b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(b) shall read:

- (2) (b) Home care organizations authorized to provide only professional support services shall pay an annual fee of eight hundred dollars (\$800.00), except that this annual fee shall be two hundred dollars (\$200.00) for (i) home care organizations that also pay a fee to be licensed by the department of mental health and developmental disabilities; (ii) home care organizations owned and operated by therapists who pay a fee to be licensed under Title 63, Chapter 13 or 17; or (iii) home care organizations that are owned and controlled by another home care organization that pay an annual license fee of at least eight hundred dollars (\$800.00). The fee must be submitted with the application and is not refundable.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of August, 2003. (08-09)

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

There will be a public hearing before the Department of Health, Bureau of Health Services Administration, to receive comments concerning amendments to the J1-Visa Waiver Rules, pursuant to Tennessee Code Annotated § 68-14-503. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-201, et seq. and will take place in the Tennessee A Room, on the Ground Floor of the Cordell Hull Building, located at 425 5<sup>th</sup> Avenue North, Nashville, Tennessee, 37247, at 10:00 A.M. CST on the 17th day of October, 2003.

Any individuals with disabilities who wish to participate in these proceedings (to review these findings) should contact the Bureau of Health Services Administration 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 Health Services Administration to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of Health Services Administration's ADA Coordinator located on the 6<sup>th</sup> Floor of the Cordell Hull Building, 425 5<sup>th</sup> Avenue North, Nashville, Tennessee, 37247, (615) 741-2101.

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

Alisa Malone  
Sixth Floor, Cordell Hull Building  
425 5th Avenue North  
Nashville, Tennessee, 37247  
(615) 741-4545

## SUBSTANCE OF PROPOSED RULES

### CHAPTER 1200-20-11 RULES AND REGULATIONS GOVERNING THE STATE CONRAD J-1 VISA WAIVER PROGRAM

#### NEW RULES

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#### 1200-20-11-.01 INTRODUCTION

The Department is committed to assuring all Tennesseans have access to quality, affordable health care. The Department will support and facilitate the placement of primary care physicians and physician specialists in accordance with the criteria outlined in these rules. Physicians who are placed must provide medical care to underserved Tennesseans. The Department is positioned to cooperate with and assist any federal agency in its sponsoring and review of requests to waive the foreign residency requirement on behalf of health care physicians holding J-1 visas who will practice in an acceptable location.

*Authority:* T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

#### 1200-20-11-.02 DEFINITIONS

As used in these rules, the terms below shall have the following meanings:

- (1) Complete application — submittal, by certified mail, of all forms and information outlined by the Department in the policies and procedures for the State Conrad J-1 Visa Waiver Program to the Nashville, Tennessee office of the State Conrad J-1 Visa Waiver Program.
- (2) Conrad Waiver — see State Conrad J-1 Visa Waiver Program.
- (3) Critical Access Hospital (CAH) — a federally designated hospital that is very small with staffing flexibility under Medicare rules for providing emergency, outpatient, and short-stay inpatient services.
- (4) Department — Tennessee Department of Health.
- (5) Health Professional Shortage Area (HPSA) — a geographical area designated by the Secretary of the U.S. Department of Health and Human Services as having a shortage of health manpower (formerly Health Manpower Shortage Area).
- (6) Health Resource Shortage Area (HRSA) — an area designated annually by the Commissioner of the

Department as having inadequate resources in place to ensure access to primary, pediatric, obstetric or TennCare Services. It includes State designated Health Resource Shortage Areas for Primary, Pediatric, Obstetrical Care and TennCare.

- (7) Indigent patients — patients who are at or below two-hundred percent (200%) of the federal poverty level with no comprehensive third-party coverage.
- (8) Managed Care Organization (MCO) — an entity rendering or arranging necessary medical services to persons who are eligible for Medicaid or TennCare Standard and who are enrolled in the TennCare managed care program. MCO's are paid by the State of Tennessee authorized and consistent with a Section 1115 waiver of the Social Security Act granted by the Health Care Financing Administration (renamed in 2001 as the "Centers for Medicare and Medicaid Services or "CMS"), U.S. Department of Health and Human Services.
- (9) Medically Underserved Area (MUA) — a geographical area which is designated by the Secretary of the U.S. Department of Health and Human Services as having a shortage of health care services using several factors, in addition to the availability of health care providers, including infant mortality rate, poverty rate, and percentage of population aged sixty five (65) or over.
- (10) Primary care physician — a physician who has completed a residency in Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine and who is also supported by a sponsoring employer.
- (11) Primary health care — services which emphasize first contact patient care. The provider assumes overall and ongoing responsibility for the patient in both health maintenance and treatment of illness, emphasizing continuity of care over the entire spectrum of health care services.
- (12) Physician specialist — a physician who has completed subspecialty training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery (subject to the restrictions noted herein). Each applicant must be supported by a sponsoring employer.
- (13) Rural areas — all counties in Tennessee, excluding Shelby, Davidson, Knox and Hamilton.
- (14) Rural Referral Center (RRC) – a federally designated hospital that is authorized under the Tax Equity and Fiscal Responsibility Act of 1982. These are rural hospitals with generally high volume whose costs more closely resemble those of urban hospitals because they treat regionally or nationally referred complex cases.
- (15) Sole Community Hospital (SCH) – a federally designated hospital that is the only provider of hospital care in its market area either because it is geographically isolated or because severe weather or travel conditions prevent travel to another hospital offering similar services.
- (16) Sponsoring employer — a health care facility or physician practice located in qualifying communities which provides primary health care to underserved residents. Examples of these facilities are hospitals, primary care clinics, community health clinics, local health departments, or private physician offices which routinely accept TennCare and indigent patients.

- (17) State Conrad J-1 Visa Waiver Program — the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416) has provided an additional basis upon which a foreign medical graduate may seek a waiver of the two-year home residence requirement. Section 220(a) of that Act added a provision that authorizes a State Department of Public Health or its equivalent to request the Director of the United States Information Agency to recommend that Immigration and Naturalization Service grant the waiver.

*Authority: T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

### **1200-20-11-.03 NECESSITY OF LICENSE AND PROFESSIONAL CREDENTIALS**

An applicant for a State Conrad J-1 Visa Waiver must be eligible for and obtain an unencumbered Tennessee license to practice the candidate's profession in the State of Tennessee. In addition, the physician must be board eligible or board certified in the specialty in which the practitioner proposes to practice in the State.

*Authority: T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

### **1200-20-11-.04 ELIGIBILITY**

- (1) The State Conrad J-1 Visa Waiver Program in Tennessee is limited to those primary care physicians who have completed a residency in one of the following medical specialties: Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine, or a physician specialist who has completed subspecialty training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology, Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery (subject to the restrictions noted herein). Each applicant must be supported by a sponsoring employer.
- (2) General Surgery specialist applications will only be accepted for Sole Community Hospitals located in a HPSA or MUA.
- (3) At the discretion of the Department, the Department will support and facilitate the placement of primary care physicians in at least seventy percent (70%) of the slots permitted by federal law each federal fiscal year in health care practice sites which are located in federally designated Health Professional Shortage Areas (HPSAs) and/or Medically Underserved Areas (MUAs), either of which must also be located within the top thirty (30) State designated Health Resource Shortage Areas (HRSAs). Each primary care physician must agree to practice primary health care at that site for a minimum of forty (40) hours per week and for a minimum of three (3) years.
- (4) At the discretion of the Department, the Department will also support and facilitate the placement of one (1) physician specialist per hospital in up to thirty percent (30%) of the slots permitted by federal law between October 1 and June 30 of each federal fiscal year in affiliation with hospitals, as designated by the

Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital either of which must be located in a HPSA or MUA. Each physician specialist must agree to practice their speciality in affiliation with that hospital for a minimum of forty (40) hours per week and for a minimum of three (3) years. If the full complement of thirty percent (30%) of the slots for physician specialists have not been committed by April 1, an additional application from a facility which has already received a physician specialist slot between October 1 and March 31 will be accepted and applications for a physician specialist will also be accepted from Critical Access Hospitals located in a HPSA or MUA from April 1 to June 30 of each federal fiscal year. If the full complement of thirty percent (30%) of slots for physician specialists have not been committed by June 30, applications from primary care physicians will be considered for any unfilled physician specialist slots. Health care practitioners who are placed must provide medical care to underserved Tennesseans.

- (5) A sponsoring employer will be considered for a J-1 visa waiver placement if its primary purpose is the provision of health care services to those who live in underserved communities based on the criteria set forth herein.
- (6) The Department will facilitate the placement of J-1 primary care physicians only in rural areas of the State. The Department will facilitate the placement of physician specialists in affiliation with hospitals, as designated by the Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital either of which must be located in a HPSA or MUA. Physician specialists who request placement as a primary care physician under the State Conrad J-1 Visa Waiver Program will be required to adhere to all the rules and regulations herein specific to primary care physicians.

**Authority:** *T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

#### **1200-20-11-.05 APPLICATION REVIEW, APPROVAL, DENIAL**

- (1) The Department will only consider a complete application that has arrived by certified mail submitted by the sponsoring employer on behalf of the physician. Submittal by any other means, including, but not limited to, hand delivered or incomplete applications, will be rejected and the application will be returned COD/certified to the sponsoring employer. The HRSAs will be designated annually. Applications for primary care practitioners will only be accepted for the HRSAs in effect at the time the complete application is received. For the federal fiscal year 2003 only, physician specialist applications will be accepted until September 30, 2003.
- (2) If an employer proposes to utilize the J-1 primary care physician at more than one (1) site within a HRSA or a physician specialist in affiliation with more than one (1) hospital, within a HPSA or MUA the name and location of each facility and a schedule of the days and hours that the physician will be available at each site must be included in the application.
- (3) Completed applications will be considered in the order in which they were received. All completed applications received beyond the maximum number of placements permitted by federal law per year will be held in a pending file to be reconsidered before any other applications at the beginning of the new federal fiscal year. In order to receive such reconsideration, however, an applicant must submit a request, in writing, setting forth his/her desire to be reconsidered, and such request must be received by the Department prior to the commencement of the Department's reconsideration process. Upon the Department's receipt of a written request for reconsideration, each applicant will be contacted by the Department to confirm its receipt of the request and confirm the applicant's continued desire for reconsideration.

- (4) The Department will review each waiver application to ensure that the proposed placement will not adversely affect or compromise delivery of health care in the HPSA or MUA in a HRSA service area. The Department is wholly responsible for the interpretation of this policy.
- (5) Once it is determined the application is complete and the applicant meets all of the appropriate requirements, a number will be assigned to the application which indicates that the Department has accepted the application as one of its allowable placements. A certified letter will be sent to the sponsoring employer notifying the sponsoring employer that the application has been forwarded to the appropriate federal agency for processing.
- (6) If the applicant does not meet State requirements, the Department will notify the sponsoring employer by certified mail. Notification of a failure to meet federal requirements will be made by the federal agency directly to the Department which, in turn, will notify the sponsoring employer.

**Authority:** *T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.*

#### **1200-20-11-.06 PROGRAM REQUIREMENTS**

- (1) The primary care physician or physician specialist seeking a J-1 visa waiver and the Chief Executive Officer of the sponsoring employer must each submit semi-annual reports to the Department which assure that the sponsoring employer and the physician are complying with the rules and regulations of the program. The first reports must be submitted within thirty (30) days after employment begins and every six (6) months thereafter, until the three-year commitment is complete. Reporting forms will be supplied to the physician and the sponsoring employer by the Department.
- (2) All primary care physicians and physician specialists who have been granted a J-1 visa waiver are required to grant Department representatives, who shall maintain full confidentiality, reasonable access to all records maintained by the physician's practice which are pertinent to ascertaining compliance with these rules and regulations, including, but not limited to, patient files and payment records. From time to time, audits for compliance with these rules and regulations may be performed by staff of the Department.
- (3) At all times, the primary care physician or physician specialist who has been granted a J-1 visa waiver must operate the practice consistent with established standards recognized or adopted by the appropriate medical specialty.
- (4) A primary care physician and physician specialist who has been granted a J-1 visa waiver is not permitted to transfer from one site to another unless such physician receives prior written approval from the Department. An unapproved transfer may result in, among other things, cancellation of the visa waiver.
- (5) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must complete an exit interview within ninety (90) days of the completion of his/her three-year obligation, or at such point that the employment contract is terminated by the sponsoring site, the physician, or the Department. The Department will conduct the exit interview, which will concentrate on the physician's experiences in Tennessee and his/her future plans for practicing at the current location or another location.
- (6) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must agree to enroll with a sufficient number of MCOs which serve at least fifty-one percent (51%) of the TennCare enrolled population in the physician's primary county of practice. In the event that one (1) or more MCO's have closed enrollment to new providers which would not allow the physician to meet this criteria, the physician must demonstrate to the Department that a good faith effort was made and that the physician has enrolled in all other MCO's accepting new providers.



- (7) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must agree, without exception, to provide services to indigent patients as long as the provider's total number of indigent patient visits does not exceed fifteen percent (15%) of the provider's total practice visits.
- (8) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must accept assignment under Section 1842(b)(3)(ii) of the Social Security Act as full payment for all services for which payment may be made under Part B of Title XVIII of such Act (Medicare). All primary care physicians and physician specialists must also accept TennCare payment as payment in full for TennCare patients.
- (9) The sponsoring employer must make known to the community that primary care physicians and physician specialists who have been granted a J-1 visa waiver will comply with the terms and conditions stated in these rules and regulations by posting a notice stating the terms and conditions in a conspicuous place in the public waiting area of the facility.

*Authority:* T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

#### **1200-20-11-.07 NONCOMPLIANCE**

Failure on the part of the sponsoring employer or the primary care physician or physician specialist who has been granted a J-1 visa waiver to comply with the rules and regulations of this program will result in a report of noncompliance to the Immigration and Naturalization Service and may, among other things, make the site ineligible for future placements for a period of time to be determined by the Department.

*Authority:* T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

#### **1200-20-11-.08 WAIVER OF RESPONSIBILITY**

- (1) The Department is not responsible for exceptions to or interpretations of these rules and regulations which have occurred without the written approval of the Immigration and Naturalization Service or its designee.
- (2) The Department is not responsible for any practice arrangements or contractual obligations entered into by primary care physicians or physician specialists prior to approval of a J-1 visa waiver request. However, all such arrangements and all related contracts must be provided to the Department to ensure compliance with the requirements of these rules.
- (3) The Department assumes no responsibility for future actions taken by the Immigration and Naturalization Service or any potential investigation that may be conducted by the Office of Inspector General. It is the responsibility of all primary care physicians, physician specialists who have been granted a J-1 visa waiver and the employers to meet any reporting requirements of the Immigration and Naturalization Service or the Department.

*Authority:* T.C.A. §§ 4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 117 of the Public Acts of 2003.

### REPEALS

Chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program is repealed in its entirety.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of August, 2003. (08-24)

### THE TENNESSEE MASSAGE LICENSURE BOARD - 0870

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-18-211. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 16<sup>th</sup> 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 Flr., Cordell Hull Building, 425 5<sup>th</sup> Ave. N., Nashville, TN 37247 1010, (615) 532 4397.

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

### SUBSTANCE OF PROPOSED RULES

#### AMENDMENTS

Rule 0870-1-.04, Licensure and Provisional Licensure Process, is amended by deleting part (1) (h) 1. in its entirety and substituting instead the following language, so that as amended, the new part (1) (h) 1. shall read:

- (1) (h) 1. Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-18-204, 63-18-205, 63-18-208, 63-18-211, and Public Chapter 137 of the Public Acts of 2003.



Rule 0870-1-.05, Establishment Licensure Process, is amended by deleting subparagraph (8) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (a) shall read:

- (8) (a) Conviction of any criminal offense of any country, state or municipality except minor traffic offenses, conviction for any sexual related offense, and conviction for prostitution or sexual misconduct offenses. A conviction for prostitution or sexual misconduct offenses shall disqualify an applicant from receiving a license. A conviction for a felony under the laws of Tennessee may disqualify an applicant from receiving a license.

*Authority:* T.C.A. §§4-5-202, 4-5-204, 63-18-204, 63-18-205, 63-18-208, 63-18-211, and Public Chapter 137 of the Public Acts of 2003.

Rule 0870-1-.07, Application Review, Approval, and Denial, is amended by adding T.C.A. §§ 63-18-208 and 63-18-209 to the rule's statutory authority citations.

*Authority:* T.C.A. §§4-5-202, 4-5-204, 63-18-208, 63-18-209, 63-18-211, and Public Chapter 137 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 August , 2003. (08-14)

**THE TENNESSEE DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES - 0940  
OFFICE OF LICENSURE**

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of amendments to present rules pursuant to Tenn. Code Ann., Section 33-1-302, 305, and 307. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., Section 4-5-204, and will take place at 10:00 a.m., on September 16, 2003, in the Third Floor Conference Room, Cordell Hull Building ,425 Fifth Avenue, North, Nashville, Tennessee.

Written comments will be considered if received by close of business, October 15, 2003, at the DMHDD Office of Legal Counsel, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243.

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

For a copy of the notice of rulemaking hearing, contact: Anita M. Daniels, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6524

## SUBSTANCE OF PROPOSED RULES

### CHAPTER 0940-5-1, DEFINITION OF DISTINCT CATEGORIES OF MENTAL RETARDATION FACILITIES

AND

### CHAPTER 0940-5-24, MINIMUM PROGRAM REQUIREMENTS FOR MENTAL RETARDATION RESIDENTIAL HABILITATION FACILITIES

Definition of General Terms used in all Rules, 0940-5-1-.01, is amended by deleting paragraph (1) in its entirety and renumbering the following paragraphs accordingly. Definition of Distinct Categories of Mental Retardation Facilities, 0940-5-1-.05, is amended by deleting paragraph (7) in its entirety and replacing it with a new paragraph (7), so that as amended 0940-5-1 shall read:

## CHAPTER 0940-5-1 DEFINITIONS

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<p>0940-5-1-.01 Definition of General Terms used in all Rules</p> <p>0940-5-1-.02 Definition of Terms used in Mental Health Rules</p> <p>0940-5-1-.03 Definition of Terms used in Mental Retardation Rules</p>	<p>0940-5-1-.04 Definition of Distinct Categories of Mental Health Facilities</p> <p>0940-5-1-.05 Definition of Distinct Categories of Mental Retardation Facilities</p>
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**0940-5-1-.01 DEFINITION OF GENERAL TERMS USED IN ALL RULES.** As used in Chapters 0940-5-1 through 0940-5-28 of these rules, unless the context indicates otherwise, terms have the following meaning:

- (1) Applicant or Licensee Applicant - The proprietorship, partnership, association, governmental agency, or corporation which makes, or is required to make, application for the licensure of a facility determined to be under the licensure jurisdiction of the Department.
- (2) Capable of Self-Preservation - Means that a person is capable of responding to an approved emergency signal, including prompting by voice, by following a pre-taught evacuation procedure within a reasonable time limitation whether or not the person is fully aware of the reasons for the action. A person is capable of self-preservation if the person is able to transfer unassisted from the bed or another fixed position to an individualized means of mobility, which is continuously available, and able to demonstrate the ability to transverse a pre-defined means of egress from the facility within a reasonable time limitation. Persons who have imposed upon them security measures beyond their control, which prevent their egress from the facility within a reasonable time limitation. Persons who have imposed upon them security measures beyond their control, which prevent their egress from the facility, are not capable of self-preservation.
- (3) Chief Executive Officer or Director - The person appointed, designated, or hired by the governing body to be responsible for the day-to-day operation of the facility or facilities operated by the licensee.

- (4) Civil Rights - The rights of personal liberty guaranteed to citizens by the Constitutions of the United States and the State of Tennessee, and by federal and state statutes.
- (5) Client - The individual who is the direct recipient of the services provided by the residential or non-residential facility subject to the licensure jurisdiction of the Tennessee Department of Mental Health and Mental Retardation.
- (6) Community Living Skills - The array of skills which enables a person to live independently in the community. These include, but are not limited to, skills in the following areas: independent living, educational/vocational, inter-personal, social, problem solving, financial, leisure time, mobility in the community and use of community resources.
- (7) Corporal Punishment - The application of painful stimuli to the body in an attempt to terminate behavior or as a penalty for behavior, but does not mean aversive stimuli.
- (8) Department - The Tennessee Department of Mental Health and Mental Retardation
- (9) Emotional Abuse - Any threatening behavior or statement directed toward a client that causes emotional trauma or fear including, but not limited to, ridicule; gestures which subject the client to humiliation or degradation; threatening motions or noises intended to startle or frighten the client.
- (10) Exploitation - Any act intended to exploit, extort or defraud a client including, but not limited to, misuse of authority over a client; forcing or compelling a client to do anything illegal or immoral; attempting to extort money from a client through devious means; or stealing a client's personal possessions.
- (11) Facility - An institution, treatment resource, group residence, boarding home, sheltered workshop activity center rehabilitation center, hospital, community mental health center, DUI school, counseling center, clinic, halfway house, or other entity by these or other names, providing mental health, mental retardation, or alcohol and drug abuse services.
- (12) Governing Body - The person or persons with primary legal authority and responsibility for the overall operation of the facility and to whom a director/chief executive officer is responsible. Depending upon the organizational structure, this body may be an owner or owners; a board of directors or other governing members of the licensee; or state, city, or county officials appointed by the licensee, etc.
- (13) Grievance Procedure - A procedure for responding to an expression of a cause of distress believed by a client, or by another acting on behalf of a client, to constitute a reason for complaint.
- (14) Guardian - The person legally appointed by a court of competent jurisdiction to have full or limited control of a client's person and/or property.
- (15) Habilitation or Habilitative Services - The structured process by which the service provider assists an individual to acquire and maintain those life skills which enables the individual to cope more effectively with the demands of the individual's own person and environment and to raise the individual's physical, mental, and social functioning. This process includes programs of formal, structured education and training referred to as "individualized program planning".
- (16) Independent Living Skills - The complete continuum of skills involved in increasing independence. These include, but are not limited to the following areas: grooming/personal hygiene, selection/care of clothing, responsible self-medication, personal safety, housekeeping, nutritional/meal preparation, eating/table manners, use of telephone and, money/budgeting concepts.

- (17) Licensed Clinical Psychologist - A psychologist licensed to practice psychology in Tennessee with the certified competency in clinical psychology determined by the State Licensing Board for the Healing Arts and the Board of Examiners in Psychology.
- (18) Licensee - The proprietorship, partnership, association, governmental agency, or corporation which operates a facility under the licensure jurisdiction of the Department.
- (19) Mental Health Services - All services pertaining to and incidental to the prevention, diagnosis, evaluation, treatment, domiciliary care, training, habilitation, counseling, or supervision of mental illness or alcohol or drug dependence or persons who are mentally ill or alcohol or drug abusers.
- (20) Mental Retardation Service - All services pertaining to and incidental to the prevention, diagnosis, evaluation, treatment, domiciliary care, training, habilitation, counseling, or supervision of mental retardation or persons who have mental retardation.
- (21) Mentally Ill Individual - An individual who suffers from a psychiatric disorder, alcoholism, or drug dependence, but excluding an individual whose only mental disability is mental retardation.
- (22) Mobile Non-ambulatory Individual - An individual who is able, without other assistance, to transfer to and-move about only with the aid of a wheelchair, walker, crutch, wheeled platform, or similar device.
- (23) On-Duty/On-Site - A staff person who is on the facility's premises and has the obligation to carry out any job responsibilities designated in his/her job description.
- (24) On-Site - A staff person who is on the facility's premises but is only required to be on duty during an emergency.
- (25) Personal Care - Protective care of a resident who does not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident when in the building. Protective care may include a daily awareness by the management of the resident's functioning, his or her whereabouts, the making and reminding a resident of appointments, the ability and readiness to intervene if a crisis arises for a resident, and supervision in areas of nutrition and medication.
- (26) Physical Abuse - Harmful or painful physical contact, including, but not limited to, the intentional striking, shoving, or pushing of a client by anyone, including another client. Also included is the use of excessive force when restraining a client (e.g., using methods restrain a client which are not outlined in staff training) and acts which constituted sexual activity.
- (27) Physician - A graduate of an accredited medical school authorized to confer upon graduates the degree of Doctor of Medicine (M.D.) who is duly licensed in Tennessee or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of Doctor of Osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee.
- (28) Physician Assistant - An individual who renders services, whether diagnostic or therapeutic, which are acts constituting the practice of medicine and, but for the provisions of T.C.A. § 63-6-204, could only be performed by a licensed physician. [Acts 1985, ch. 376, 1; T.C.A. § 63-19-202]
- (29) Policies and Procedures Manual - A document that describes the philosophy, services, organization, policies, and procedures for implementing services to the clients of a facility.

- (30) Psychiatrist - A physician who specializes in the assessment and treatment of individuals having psychiatric disorders; is certified by the American Board of Psychiatry and Neurology or has the documented equivalent in education, training and/or experience; and who is fully licensed to practice medicine in the State of Tennessee.
- (31) Psychoactive Drug - Any drug used for medical purposes to treat mental disorders and which has as its main action effects on the central nervous system.
- (32) Reputable and Responsible Character - Having a personal and/or business history which suggests that the licensee can be trusted with responsibility for individuals particularly vulnerable to neglect and financial and sexual exploitation. Personal and/or business histories involving operation of substandard facilities and arrest record resulting in a conviction for offense relating to theft, larceny, embezzlement, rape, assault, homicide drugs, and pornography, are inherently, inconsistent with "reputable and responsible character".
- (33) Seclusion - The placement of an individual alone in a room or other area from which egress is prevented.
- (34) Treatment - Activities, individualized program, modalities, or interventions provided by a mental health professional or mental health personnel designed and implemented for the enhancement/improvement of the individual's assessed mental health problems.
- (35) Verbal Abuse - Insulting or coarse language directly toward a client which subjects the client to humiliation or degradation, including, but not limited to, swearing at a client, name calling, taunting, and other inappropriate verbal behavior.
- (36) Vocational Services - The services provided to clients involving remunerative work experiences within the licensed facility and the provision of vocational activities of an industrial or productive vocational nature such as assembling, packaging, painting, stripping, wood or metal working, or manufacturing within the licensed facility.
- (37) Volunteer - A person who is not paid by the licensee and whose varied skills are used by the licensee to support and supplement the efforts of the paid facility staff.

**0940-5-1-.02 DEFINITION OF TERMS USED IN MENTAL HEALTH RULES.** As used in Chapters 0940-5-14 through 0940-5-19 of these rules, unless the context indicates otherwise, terms have the following meaning:

- (1) Activity Therapy Staff - Persons with degrees and/or clinical training and/or certification registration in a recognized activity therapy field which includes, but is not limited to, therapeutic recreation, music therapy, occupational therapy, art therapy, or dances therapy, or a person who is directly supervised by one of the above professionals.
- (2) Individualized Program Plan - A document developed by the treatment staff/team which identifies the client's problems and specifies goals to be addressed in treatment and the interventions used 'to accomplish each goals.
- (3) Licensed Clinical Psychologist - A psychologist licensed to practice psychology in Tennessee with the certified competency in clinical psychology determined by the State Licensing Board for the Healing Arts and the Board of Examiners in Psychology.

- (4) Mental Health Personnel - A staff member who operates under the direct supervision of a mental health professional.
- (5) Mental Health Professional - A board eligible or a board certified psychiatrist or a person with at least a Master's degree and/or clinical training in an accepted mental health field which includes, but is not limited to, counseling, nursing, occupational therapy, psychology, social work, vocational rehabilitation, or activity therapy.
- (6) Physical Holding - The use of body contact by staff to prevent the client's behavior from becoming dangerous to himself, others, or property.
- (7) Prevention - Services that are provided to the general public or a target population in order to reduce the occurrence or severity of mental illness.
- (8) Qualified Dietician - A person who holds current registration from the American Dietetic Association or who has the documented equivalent in education, training, and experience.
- (9) Qualified Food Service Manager - A qualified dietician, a graduate of a dietetic technician or assistant training program approved by the American Dietetic Association or a graduate of a state-approved course that provides ninety (90) or more hours of classroom instruction in food service supervision who has experience as a supervisor in a health care institution with consultation from a qualified dietician.
- (10) Qualified Medical Records Practitioner - An accredited record technician (ART) currently accredited by the American Medical Records Association, or a registered record administrator (RRA) currently registered by the American Medical Record Association or others qualified by work experience.
- (11) Quality Assurance - A systematic procedure for the review and evaluation of the agency's functions, quality of services and the utilization of resources in the provision of services.
- (12) Restraint - Any physical or mechanical device or chemical substance used to restrict the movement of an individual or the movement or normal function of a portion of an individual's body.
- (13) Restrictive Procedure - A treatment procedure that limits the rights of the individual for the purpose of modifying problem behavior, e.g. time out and restraint.
- (14) Time Out - A behavior management procedure in which, contingent upon the demonstration of undesired behavior, the opportunity for positive reinforcement is withheld.
- (15) Trained Clinical Professional - A professional who has been granted clinical privileges by a hospital to practice his/her specialty at that facility.
- (16) Treatment - Activities, individualized program, modalities or interventions provided by a mental health professional or mental health personnel designed and implemented for the enhancement/improvement of the individual's assessed mental health problems.

**0940-5-1-.03 DEFINITIONS OF TERMS USED IN MENTAL RETARDATION RULES.** As used in Chapters 0940-5-20 through 0940-5-28 of these rules, unless the context indicates otherwise, terms have the following meaning:

- (1) Adaptive Behavior- The effectiveness or degree with which an individual meets the standard- of personal independence, maturation, learning, and social responsibility expected for his age and cultural group.
- (2) Aversive Stimuli - Painful or noxious stimuli which are employed to reduce the frequency of or to eliminate problem behaviors.
- (3) Behavior-Management Drugs - A drug or medication used for the purpose of modifying, limiting, or eliminating problem behaviors. Included are the major and minor tranquilizers and antidepressants. Excluded are drugs that may have behavior-modifying effects but that are not prescribed or administered for that purpose, such as anticonvulsants.
- (4) Direct-Services Staff - Home or cottage managers and aides, developmental technicians, or persons in other similar categories having face-to-face contact with clients, but excluding administrators, bookkeepers, accountants, secretaries, typists, clerks, or other clerical personnel, doctors, nurses, psychologists, speech and hearing therapists, pharmacy and other professional support personnel, maintenance, groundskeepers, cooks, bus drivers, or other personnel, teachers, trainers, social workers, and other professional personnel unless such personnel are under specific assignment to direct services staff duties and then only for that amount of time devoted to direct services staff duties.
- (5) Emergency Procedures - Refers to the use of procedures necessary to control severely aggressive or destructive behaviors that could not have been anticipated and that place the individual or others in imminent danger.
- (6) Human Rights Committee - A designated group of people which consists of at least three (3) members, one of whom must be independent of the facility. The committee's function is to review facility activities to ensure that client rights are not neglected or abused. Such reviews should include, but should not be limited to, behavior management programs.
- (7) Mental Retardation Specialist - A person with a bachelor's degree in a field related to developmental disabilities or a person with a bachelor's degree and two (2) years of supervised work in mental retardation.
- (8) Restraint - Any of the following:
  - (a) Chemical Restraint - A chemical substance for the control of problem behaviors which, when administered in a given dosage, results in a decrease or the elimination of the individual's capability for self-preservation.
  - (b) Mechanical Restraint - A mechanical device which restricts the movement of an individual or the movement or normal function of a portion of an individual's body for the purpose of behavior control.
  - (c) Personal Restraint/Physical Holding - The use of body contact by staff to control a client's problem behavior.
- (9) Restrictive Behavior Management - A procedure that limits the rights of the individual for the purpose of controlling or modifying problem behaviors and seeks to replace them behaviors that are adaptive and appropriate.
- (10) Time-Out Room - A room or enclosed area in which the individual is placed contingent upon the exhibition of a problem behavior in which reinforcement is not available and from which egress is denied until appropriate behavior is exhibited.



**0940-5-1-.04 DEFINITION OF DISTINCT CATEGORIES OF MENTAL HEALTH FACILITIES.**

- (1) Mental Health Crisis Stabilization Unit - A community based facility that offers twenty-four (24) hour intensive treatment and residential care. The focus of the program may be on short-term crisis stabilization or on longer-term treatment. The program has the capability of admitting voluntary clients as well as involuntary clients who can be managed in a non-hospital setting. The program differs from a Residential Treatment Facility in that the staff are twenty-four (24) hour treatment staff and the program offers intensive treatment for persons with serious psychiatric disorders. At least one registered nurse or physician assistant must be on duty twenty-four (24) hours a day.
- (2) Mental Health Day Program Facility - A non-residential facility that provides a treatment and/or rehabilitation program of at least three (3) hours duration per program day for persons with mental disorders. The program may be provided during the day, evening, or weekend hours. The program may be structured and offer community living skills training, vocational training, assistance with interpersonal relationships and be geared toward moving the person on to a more independent and normal life style. The program might also be unstructured and provide socialization and maintenance to persons who might not move on to more independence.
- (3) Mental Health Hospital Facility - An inpatient, facility which is held out to the public as a hospital and, in connection with the services of a physician, offers diagnosis, treatment, and care to mentally ill individuals on a comprehensive inpatient basis.
- (4) Mental Health Outpatient Facility - A non-residential, clinic facility which provides services designed to provide mental health care for non-hospitalized individuals experiencing acute or ongoing psychiatric distress. Periodic contacts are of short duration. Services include, but are not limited to, diagnostic assessments, collateral services, individual therapy, crisis intervention, medication, and follow up.
- (5) Mental Health Residential Treatment Facility - A community-based facility that offers twenty-four (24) hour residential care as well as a treatment and rehabilitation component. The focus of the program may be on short-term crisis stabilization or on long-term rehabilitation that includes training in community living skills, vocational skills, and/or socialization. The staff includes direct-care staff as well as treatment staff. Treatment staff may be present full time or only during times when program activities or interventions are occurring. Access to medical services, social services, and mental health services are insured and are usually provided off site.
- (6) Mental Health Supportive Living Facility B A residential facility which provides room, board, and personal care services on a long term placement basis to two (2) or more mentally ill individuals unrelated to the owner or operator of the facility.
- (7) Psychosocial Rehabilitation Program Facility - A non-residential, facility which provides a program of rehabilitation and recreation for persons with mental disorders. The program maybe provided during the day, evening, or weekends hours. The focus of the program is on mental health, strengths and abilities, rather than mental illness, symptoms and problems. Clients are typically members and not patients and frequently are responsible for most of the content and format of the program. The degree of structure may vary but will generally offer interpersonal skill training, daily living skills training, educational development, recreational/social activities, self-help groups, and family involvement. However, a major focus of the program is on vocational rehabilitation. Members may participate in the program with varying intensity for an indefinite period of time.
- (8) Mental Health Intensive Day Treatment Program For Children and Adolescent Facility - A program equal in length to a school day or after school program which includes a variety of treatment activities includ-



ing, but not limited to, individual, family, and/or group therapy, vocational training, social skills training, etc.; and an educational component.

- (9) Therapeutic Nursery Program Facility - A non-residential facility program lasting a minimum of (3) hours, per day designed specifically for pre-school children who are experiencing serious emotional disturbance which is a result of severe environmental trauma, especially child abuse or neglect. A variety of treatment activities are provided which may include individual therapy, therapeutic group instruction and socialization, and a variety of activities to address developmental deficits resulting from environmental trauma.

**0940-5-1-.05 DEFINITION OF DISTINCT CATEGORIES OF MENTAL RETARDATION FACILITIES**

- (1) Mental Retardation Adult Habilitation Day Facility - A non-residential facility which offers a variety of habilitative activities to adults with mental retardation. Such habilitative activities may range from training activities in independent living to vocational skills depending on the needs of the clients being served. This includes adult developmental training, work activity, and sheltered workshop programs but does not include job placement and supported employment programs
- (2) Mental Retardation Boarding Home Facility - A residential facility which offers personal care services including room, board, and supervision to two (2) or more mentally retarded adults unrelated by blood or marriage to the owner or operator of the facility. The clients of such facilities are capable of self-preservation, able to care for basic self-help needs with minimal assistance, able to care for personal possessions, able to maintain personal living areas in a state of orderliness, able to recognize danger or threat to personal safety, able to recognize danger or threat to personal safety, able maintain behavior which is generally tolerable to the community, and able to attend to minor health care needs.
- (3) Mental Retardation Diagnosis and Evaluation Facility - A non-residential facility which provides personnel and testing resources to perform diagnosis and evaluation of persons having, or suspected of having mental retardation.
- (4) Mental Retardation Institutional Habilitation Facility - A facility which offers on a regular basis health-related services to individuals with mental retardation who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but, because of physical or mental condition, require residential care and services (more than room and board) that involve health-related care under the supervision of a physician. Such a facility also offers an intensive program of habilitative services.
- (5) Mental Retardation Placement Services Facility - A facility program which provides or arranges regular residential placements in the individual home of care providers who are recruited, trained, and supervised by the facility program. The entity licensed is the program delivering such services rather than the individual homes of the program's care providers. No more than three (3) clients at a time are placed in an individual care provider's home. Such programs are known as foster care and sponsor care.
- (6) Mental Retardation Preschool Facility - A non-residential facility which offers a program of training, habilitation, or care to mentally retarded minors or minors at risk of mental retardation not of the chronological mandatory age to be enrolled in services of the Department of Education, and which is designed to teach self-help, socialization, communication, or school readiness skills, or designed to train parents or surrogates in methods and techniques of habilitation of the mentally retarded person.

- (7) Mental Retardation Residential Habilitation Facility – A residential facility which provides room and board, and assistance in acquiring, retaining and improving self-help, socialization and adaptive skills necessary to live in a community setting. The facility shall provide training in the acquisition of, and assistance in completing skills related to, daily living, personal grooming, cleanliness, bedmaking, household chores, eating, meal preparation and any other skills necessary, based on the service recipient's needs. The service shall be specified in the Individual Support Plan with specific therapeutic goals. Any professional services delivered in the facility shall be provided by duly licensed staff and specified in the Individual Support Plan.
- (8) Mental Retardation Respite Care Services Facility - A facility program which provides or arranges for the temporary placement of clients in the care of persons recruited, trained, and supervised by the program facility for the purpose of giving relief to the regular caregiver or to provide other assistance to the client, the client's family, guardian, or care giver. The licensed entity is the program delivering such services rather than the individual homes of the program's providers. No more than three (3) clients at a time are placed in an individual care provider's home.
- (9) Mental Retardation Semi-Independent Living Facility - A facility program which services adults clients who are able to reside in a housing situation without program staff residing on site to supervise the clients' home life style but require the support services of program staff in order to reside in such housing situations. The facility program offers and provides regular and as needed support services in procuring or monitoring adequate housing for clients, supervising home life styles, and assisting in development of higher-order independent living skills. The entity licensed is the program delivering the services rather than the individual dwellings for clients.
- (10) Mental Retardation Supported Living Services Facility - A service entity which provides support and assistance to individuals with mental retardation who live in their own homes or apartments but require such staff support and assistance to reside in such housing situations. Service entity staff provide support and assistance on a regular basis in accordance with the needs of the individual(s) living in the home. No more than three (3) persons receiving services shall reside in the home. The service entity delivering the Support is licensed rather than the homes of the individuals receiving the support.

Chapter 0940-5-24, Minimum Program Requirements For Mental Retardation Residential Habilitation Facilities, is amended by deleting it in its entirety and replacing it with the following:

**CHAPTER 0940-5-24**  
**MINIMUM PROGRAM REQUIREMENTS FOR MENTAL RETARDATION RESIDENTIAL HABILITATION FACILITIES**

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**9040-5-24-.01 HEALTH, SAFETY AND WELFARE SAFEGUARDS IN RESIDENTIAL HABILITATION FACILITIES**

- (1) The facility must provide or procure assistance for service recipients in locating qualified dental, medical, nursing and pharmaceutical care including care for emergencies.
- (2) The facility must ensure that each service recipient receives an annual physical examination (unless less often is indicated by the service recipient’s physician) which includes routine screenings (such as vision and hearing) and laboratory examinations (such as Pap smear, mammogram, prostate screening, and blood work) as determined necessary by the physician and special studies where the index of suspicion is high.
- (3) The facility must ensure that each service recipient receives an annual dental examination.
- (4) The facility must require that a service recipient receive immunizations as required by the Department of Health unless contraindicated by a doctor’s written orders.
- (5) The facility must ensure that each service recipient has a physical examination within the twelve (12) months prior to admission or within thirty (30) days after admission.
- (6) The facility must ensure that employees practice infection control procedures that will protect service recipients from infectious diseases.
- (7) The facility must enable the service recipient/legal representative to choose a personal physician for routine services.
- (8) The facility must insure that appropriate corrective actions have been taken in response to substantiated abuse or neglect.

**0940-5-24-.02 PERSONNEL AND STAFFING REQUIREMENTS FOR RESIDENTIAL HABILITATION FACILITIES**

- (1) The facility must provide one (1) direct services staff member for every ten (10) service recipients present in the facility.

- (2) All employees must be screened for tuberculosis according to the procedures of the Tennessee Department of Health or receive a tuberculosis skin test or chest x-ray before working directly with service recipients. Documentation must be maintained in the employee's personnel file.
- (3) The facility must document that the Hepatitis B vaccine is made available to direct service staff.
- (4) Employees must be provided with a basic orientation in the specific needs of a service recipient prior to being assigned to work with him/her.
- (5) The facility must provide at all times at least one (1) on-duty staff member who is certified in First Aid, Cardiopulmonary Resuscitation (CPR), and the Heimlich maneuver.
- (6) All employees must receive training in detection, reporting and prevention of abuse. This training must be documented in the employee record.
- (7) All professional services must be provided by persons duly licensed or certified to practice their profession in the State of Tennessee.
- (8) Service recipients must never be left unattended unless otherwise specified in the individual support plan. Approval by appropriate staff must be documented in the service recipient's record.

**0940-5-24-.03 SERVICE RECIPIENT RECORD REQUIREMENTS FOR RESIDENTIAL HABILITATION FACILITIES**

- (1) Each service recipient's record must contain the following information:
  - (a) A recent photograph and a description of the service recipient;
  - (b) The service recipient's social security number;
  - (c) The service recipient's legal competency status, including name of guardian/conservator, if applicable;
  - (d) The service recipient's sources of financial support, including social security, veteran's benefits and insurance;
  - (e) The sources of coverage for medical care costs;
  - (f) The name, address and telephone number of the physician or health agency providing medical services;
  - (g) Documentation of all drugs prescribed or administered by the facility which indicates date prescribed, type, dosage, frequency, amount, reason, and side effects;
  - (h) Documentation of medical problems, accidents, seizures and illnesses and treatments for such medical problems, accidents, seizures and illnesses while the service recipient is in the care of the facility;
  - (i) Documentation of significant behavior incidents and of actions taken while the service recipient is in the care of the facility;

- (j) Documentation of the use of restrictive behavior-management techniques while the service recipient is in the care of the facility;
- (k) A list of each individual article of each personal property valued at one hundred dollars (\$100) or more including its disposition, if no longer in use; and
- (l) Written accounts of all monies received and disbursed on behalf of the service recipient;
- (m) A discharge summary, which states the date of discharge, reasons for discharge, and referral for other services, if appropriate.

**0940-5-24-04 MEDICATION ADMINISTRATION IN RESIDENTIAL HABILITATION FACILITIES**

- (1) The level of supervision during the administration of medication is commensurate with the service recipient's capability.
- (2) The facility must ensure that if service recipients are not capable of self-administration, medication will only be administered by personnel who are licensed or certified to administer medication in the State of Tennessee.
- (3) The facility must ensure that prescription medications are taken only by service recipients for whom they are prescribed, and in accordance with the directions of a physician.
- (4) The facility must assist with procuring and taking of prescription and non-prescription medications.
- (5) Drugs must be stored in a locked container, which ensures proper conditions of security and sanitation and prevents accessibility to any unauthorized person.
- (6) Discontinued and outdated drugs and containers with worn, illegible, or missing labels must be disposed.
- (7) All medication errors, drug reactions, or suspected over medications must be reported to the practitioner who prescribed the drug.
- (8) Evidence of the current prescription of each medication taken by a service recipient must be maintained by the facility.

**0940-5-24-.05 SUPPORTS AND SERVICES IN RESIDENTIAL HABILITATION FACILITIES.**

- (1) The facility must provide supports and services that comply with the following:
  - (a) Activities available to service recipients throughout the day must be based on each service recipient's preferences and interests.
  - (b) Activities have an identifiable purpose and are of meaningful activity.
  - (c) The physical and nutritional needs of service recipients are addressed.
  - (d) Service recipients who have eating/swallowing problems are identified and identified problems are addressed.

- (e) Special diets and mealtime practices are implemented as needed.
- (f) Service recipients must have access to prescribed adapted equipment and/or assistive technology.
- (g) Equipment is monitored to determine proper fit, working order and need for repair.
- (h) Equipment storage is available.
- (i) Service recipients must be provided assistance in the use and protection of money.

**0940-5-24-.06 PERSONAL SUPPORT AND ASSISTANCE IN RESIDENTIAL HABILITATION FACILITIES**

- (1) The facility must provide service recipients with the level of support and assistance needed in a private and dignified manner.
- (2) The facility must provide service recipients with the level of support and assistance needed in the use of dental appliances, eyeglasses and hearing aids.
- (3) The facility must be responsible for the implementation of all physician orders.
- (4) The facility must assist each service recipient in securing an adequate amount of personally owned, clean and seasonal clothes that are of correct size.
- (5) Each service recipient must be provided the level of support and assistance needed to purchase and select his/her own clothes.

**0940-5-24-.07 RECREATIONAL ACTIVITIES IN RESIDENTIAL HABILITATION FACILITIES**

- (1) The facility must ensure that opportunities are provided for recreational activities, which are appropriate and adapted to the needs, interests and ages of the service recipients. These activities should be community oriented and meaningful in nature.

**0940-5-24-.08 DAY ACTIVITIES IN RESIDENTIAL HABILITATION FACILITIES**

- (1) The facility must ensure that day activities are available. Such day activities must take into account the age, interests, abilities and needed supports of the service recipients and be provided in accordance with the Individual Support Plan.
- (2) If the service recipient attends a school or day program provided outside of the facility, the facility's staff must participate with the school personnel in developing an individual education plan or with the day program staff in developing an individual support plan, as appropriate.

**0940-5-24-.09 ASSESSMENT REQUIREMENTS FOR RESIDENTIAL HABILITATION FACILITIES**

- (1) The following assessments must be completed prior to developing the Individual Support Plan:

- (a) An assessment of current functioning in such areas as adaptive behavior and independent living skills;
- (b) A basic medical history and information and determination of the necessity of a medical evaluation and a copy, where applicable, of the results of the medical evaluation;
- (c) A six-month history of prescription, and non-prescription drugs, and an alcohol and substance abuse history.
- (d) An existing psychological assessment on file which is updated as recommended.

**0940-5-24-.10 INDIVIDUAL SUPPORT PLAN REQUIREMENTS IN RESIDENTIAL HABILITATION FACILITIES.**

- (1) The facility must ensure that a written, Individual Support Plan (ISP) is provided and implemented for each service recipient within thirty (30) days of enrollment. The ISP must include the following:
  - (a) The service recipient's name;
  - (b) The date of plan development;
  - (c) Goals and objectives which are related to the specific needs and preferences which are to be addressed;
  - (d) Interventions that address specific goals and objectives, identify staff responsible for interventions and planned frequency of contacts;
  - (e) The facility must maintain documentation that supports the implementation and results of the service recipient's plan;
  - (f) Signature(s) of staff who develop the plan and the primary staff responsible for its implementation; and
  - (g) Signature of the service recipient (and/or conservator, legal custodian, or attorney in-fact) or documentation of reasons for refusal to sign and/or inability to participate in Individual Support Plan development.

**0940-5-24-.11 INDIVIDUAL SUPPORT PLAN MONITORING IN RESIDENTIAL HABILITATION FACILITIES**

- (1) A review of the service recipient's response to the plan in achieving goals and meeting his/her needs must be documented monthly.
- (2) The Individual Support Plan must be reviewed annually and revised as indicated.

**0940-5-24-.12 REQUIREMENTS FOR THE USE OF RESTRICTED BEHAVIOR INTERVENTIONS IN RESIDENTIAL HABILITATION FACILITIES**

- (1) The facility must ensure that restricted behavior interventions are not provided until unrestricted interventions have been systematically tried or considered and have been determined to be inappropriate or otherwise contraindicated.
- (2) The facility must ensure that restricted behavior interventions are only provided through an approved written intervention plan.
- (3) If restricted interventions are provided, the written intervention plan must:
  - (a) be based upon a functional assessment;
  - (b) utilize the least intrusive effective intervention that supports the service recipient in developing alternative behaviors;
  - (c) include procedures to reinforce the service recipient for interacting in more adaptive, effective ways so that the need for the challenging behavior is reduced;
  - (d) include information on the functional assessment, treatment rationale, procedures, generalization and maintenance strategies, data collection, and schedule for progress review;
  - (e) include measurable criteria for fading or removing the restricted intervention based on progress;
  - (f) clearly define all responsibilities for implementing components of the plan;
  - (g) clearly describe for staff: the description of the behavior, situations in which the behavior is likely to occur, signs and signals that occur prior to the behavior and what staff should do to reduce the likelihood of the behavior occurring, how staff should respond when the behavior occurs, what staff should do to encourage appropriate responses, what information staff should document, and crisis intervention or emergency procedures, as applicable.
- (4) The facility must ensure that the written intervention plan is reviewed and approved by appropriately constituted Behavior Support and Human Rights Committees prior to its implementation.
- (5) The facility must ensure that staff who implement the written intervention plan are trained to competency on implementing the plan.
- (6) The facility must ensure that staff implementation of the plan is monitored regularly and reported as part of progress notes as least monthly.
- (7) The facility must ensure that in the provision of behavior services, restraint or protective equipment is used only to protect the service recipient or others from harm and when other less intrusive methods have been ineffective or are contraindicated.
- (8) The facility must ensure that in the provision of behavior services, the programmatic restraint or protective equipment is used only as part of any approved intervention plan for which consent has been obtained.
- (9) The facility does not employ the following devices or practices in the provision of behavior services:
  - (a) restraint vests, camisoles, body wraps;
  - (b) devices that are used to tie or secure a wrist or ankle to prevent movement;



- (c) restraint chairs or chairs with devices that prevent movement;
- (d) removal of a service recipient's mobility aids such as a wheelchair or walker;
- (e) protective equipment that restricts or prevents movement or the normal use/functioning of the body or body part to which it is applied;
- (f) protective equipment that impairs or inhibits visual or auditory capabilities or prevents or impairs speech or other communication modalities;
- (g) any actions, including isolation or restraints imposed as a means of coercion, discipline, convenience or retaliation;
- (h) corporal punishment, denial of a nutritionally balanced diet or any other procedures that may result in physical or emotional harm to the service recipient; and
- (i) time out rooms.

**0940-5-24-.13 USE OF PSYCHOTROPIC MEDICATIONS IN RESIDENTIAL HABILITATION FACILITIES**

- (1) The facility must obtain the following when psychotropic medications are used:
  - (a) a diagnosis that is based on a comprehensive psychiatric assessment;
  - (b) reasons for prescribing medications
- (2) The facility must ensure that there is informed consent from the service recipient and/or the guardian/conservator prior to utilizing psychotropic medications.

*Authority:* T. C. A. §§4-4-103; 4-5-202 and 204; §§ 33-1-302, 305, and 309; and §§ 33-2-301 and 302

This notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of August, 2003. (08-17)

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

The Tennessee Department of Mental Health and Developmental Disabilities will hold a public hearing to consider the promulgation of new rules pursuant to Tenn. Code Ann., §§ 33-1-305 and 33-3-217. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code. Ann., Section 4-5-204, and will take place in the Room 133, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, at 10:00 a.m., on the 21<sup>st</sup> day of October, 2003.

Written comments will be considered if received by close of business, October 21, 2003, at the DMHDD Office of Legal Counsel, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243.

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

For a copy of the notice of rulemaking hearing, contact: Anita M. Daniels, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, Fifth Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6524

## SUBSTANCE OF PROPOSED RULES

### CHAPTER 0940-1-6 CAPACITY TO MAKE DECISIONS

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#### **0940-1-6-.01 PURPOSE.**

- (1) The purpose of this chapter is to prescribe a uniform assessment process under T.C.A. §33-3-217, to determine whether a service recipient lacks capacity to make informed decisions.

#### **0940-1-6-.02 SCOPE.**

- (1) This chapter covers the determination of whether a service recipient with mental retardation, mental impairment related to a developmental disability, mental illness, or serious emotional disturbance has capacity to make an informed decision about a procedure or treatment under T.C.A. §§33-3-217 and 218. For persons with a mental illness or serious emotional disturbance, this chapter does not cover outpatient services and does not cover services in an emergency room in a medical or surgical facility except for psychiatric admission to the facility. This chapter does not apply to any emergency that endangers a service recipient's health or life.

#### **0940-1-6-.03 APPLICABILITY.**

- (1) For an adult service recipient with mental retardation or mental impairment related to a developmental disability under T.C.A §33-1-101, this chapter applies to:
  - (a) admission to a developmental center under T.C.A. §33-5-301,

- (b) discharge from a developmental center under T.C.A. §33-5-303, or
  - (c) routine medical, dental, or mental health treatment.
- (2) For a service recipient, 16 years old or older, with a mental illness or serious emotional disturbance, this chapter applies to:
- (a) application for voluntary admission to or discharge from a hospital or inpatient treatment resource;
  - (b) after voluntary or involuntary admission to a hospital or inpatient treatment resource, determination of the service recipient's capacity to make an informed decision regarding:
    - 1. inpatient mental health treatment,
    - 2. release of information, or
    - 3. request for information .

**0940-1-6-.04 DEFINITIONS.**

- (1) "Developmental disability" means a condition based on having either a severe chronic disability or mental retardation as defined in T.C.A §33-1-101.
- (2) "Examiner" means:
  - (a) For a service recipient with mental illness or serious emotional disturbance, a physician or "qualified mental health professional", or
  - (b) For a service recipient with mental retardation or mental impairment related to a developmental disability: (1) a licensed dentist for routine dental treatment; (2) a licensed physician for routine medical or mental health treatment; (3) a licensed psychologist with health service provider designation, for routine mental health treatment.
- (3) "Lacks capacity" means that the person is:
  - (a) Unable to understand a proposed procedure or treatment; or
  - (b) Unable to understand the risks and benefits of such procedure or treatment; or
  - (c) Unable to understand the risks and benefits of an available alternative to the procedure or treatment.
- (4) "Licensed physician" means a graduate of an accredited medical school authorized to confer upon graduates the degree of doctor of medicine (M.D.) who is duly licensed in the state, or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of doctor of osteopathy (D.O.) and who is licensed to practice osteopathic medicine in the state.
- (5) "Mental illness" as defined in T.C.A §33-1-101(16), means a psychiatric disorder, alcohol dependence, or drug dependence, but does not include mental retardation or other developmental disabilities.

- (6) “Mental retardation” as defined in T.C.A §33-1-101(17), means substantial limitations in functioning:
- (a) As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and
  - (b) That are manifested before age eighteen.
- (7) “Qualified mental health professional” means a person who is licensed in the state, if required for the profession, and who is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner, or senior psychological examiner; social worker who is certified with two (2) years of mental health experience or licensed; marital and family therapist; nurse who has a master’s degree in nursing who functions as a psychiatric nurse; professional counselor; or if the person is providing service to service recipients who are children, any of the above educational credentials plus mental health experience with children.
- (8) “Routine medical, dental, or mental health treatment” means commonplace, everyday medical, dental or mental health treatment but does not include psychosurgery, convulsive therapy, and elective surgery.
- (9) “Serious emotional disturbance” means a condition in a child who currently or at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria that results in functional impairment which substantially interferes with or limits the child’s role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology.
- (10) “Severe, chronic disability” in a person over five (5) years of age means a condition that:
- (a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (b) Is manifested before age twenty-two (22);
  - (c) Is likely to continue indefinitely;
  - (d) Results in substantial functional limitations in three or more of the following major life activities:
    - 1. Self-care;
    - 2. Receptive and expressive language;
    - 3. Learning;
    - 4. Mobility;
    - 5. Self-direction;
    - 6. Capacity for independent living; and
    - 7. Economic self-sufficiency; and

- (e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is likely to continue indefinitely and to need to be individually planned and coordinated.

“Severe, chronic disability” in a person up to five (5) years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability as defined for persons over five (5) years of age if services and supports are not provided.

**0940-1-6-.05 ASSESSMENT.**

- (1) Validity of the assessment. If an evaluator concludes that a service recipient is unable to make an informed decision about a subject to which these rules apply, then the service recipient lacks capacity for a decision about the subject matter at that time.
- (2) Performing the assessment.
  - (a) The examiner must approach the evaluation of a service recipient's capacity to make an informed decision on the presumption that the service recipient has capacity.
  - (b) The examiner must take every reasonably practicable step to conduct the assessment in a way that enables the service recipient to show capacity to make informed decisions about the procedure or treatment. The examiner must, at the minimum, perform steps 1 and 2 below, as well as those stated in subdivision (2)(c) of this rule.
    - 1. The examiner must:
      - (i) Determine the service recipient's most effective method of taking in and processing information and convey information in that way;
      - (ii) Adjust the examiner's communication to allow for physical, educational, socio-economic, cultural and linguistic differences between the service recipient and examiner; and
      - (iii) Minimize the impact of anything that may cause stress on the service recipient.
    - 2. The examiner must provide all information that is necessary for the service recipient to show capacity to make decisions on:
      - (i) The issue to be decided;
      - (ii) The reason a decision is needed;
      - (iii) The proposed procedure or treatment and the risks and benefits of the proposed procedure or treatment;
      - (iv) The risks and benefits of any available alternatives;
      - (v) The service recipient's right to refuse or later withdraw from participation in the procedure or treatment and the risks and benefits of refusal or withdrawal; and

- (vi) Any consequences of accepting or refusing the procedure or treatment.
- (c) The examiner must seek responses from the service recipient on the following points, at least, before deciding whether the person lacks capacity:
1. The person's understanding of the proposed procedure or treatment;
  2. The person's understanding of the issue the person is to decide;
  3. The person's understanding of what could happen if the procedure or treatment is carried out;
  4. The person's understanding of what could happen if the procedure or treatment is not carried out;
  5. The person's understanding of the procedure's or treatment's side effects;
  6. The person's understanding of other ways the issue could be addressed;
  7. The person's understanding of the risks and benefits of any available alternative procedure or treatment;
  8. The person's understanding that the procedure or treatment can be refused and what will happen if the procedure or treatment is refused;
  9. The person's understanding of whether the procedure or treatment can be stopped after it begins;
  10. The person's understanding of the result of any of the other ways of addressing the issue, refusing to address the issue, or stopping the procedure or treatment after it has begun;
  11. The person's ability to communicate the person's own wishes with respect to the proposed procedure or treatment; and
  12. The person's ability to maintain a choice by continuing to express the same decision about the issue at various times during the assessment process.
- (3) Recording the assessment. The examiner must record the form and method of the assessment, including:
- (a) The issue which required an informed decision;
  - (b) Specific actions, statements, or behaviors of the service recipient that initially gave reason to question the service recipient's lack of capacity;
  - (c) How information was provided in the service recipient's most effective method of taking in information;
  - (d) Communication adjustments that the examiner made to allow for physical, educational, socio-economic, cultural, and linguistic differences between the service recipient and examiner;
  - (e) Measures that the examiner or others took to minimize the impact of all stress on the service recipient;

- (f) Specific actions taken by the examiner to assist the service recipient in demonstrating understanding of the risks and benefits of the proposed procedure or treatment and any alternative procedure or treatment, including actions taken to assist the service recipient's communication of the person's own decision on the issue;
- (g) Specific service recipient statements or behaviors that support the examiner's conclusion about the service recipient's capacity to make an informed decision;
- (h) The examiner's conclusion on the service recipient's capacity to make an informed decision; and
- (i) The examiner's signature, credentials, and the date of the assessment.

**0940-1-6-.06 DUTY OF DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES.**

- (1) The department must maintain a list of procedures and tools that are acceptable to assess whether a person has capacity. Examiners may use these procedures and tools or develop their own, consistent with the requirements of this chapter.

*Authority:* T.C.A. §§4-4-103, 33-1-305, 33-3-217, and 33-3-218.

This notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of August, 2003. (08-28)

**BOARD OF OCCUPATIONAL AND PHYSICAL THERAPY EXAMINERS - 1150  
COMMITTEE OF PHYSICAL THERAPY**

There will be a hearing before the Tennessee Board of Board of Occupational and Physical Therapy Examiners' Committee of Physical Therapy to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, and 63-13-304. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 28<sup>th</sup> 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, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

## SUBSTANCE OF PROPOSED RULES

### AMENDMENTS

Rule 1150-1-.04, Qualifications for Licensure, is amended by deleting subparagraph (3) (a) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (d) but not its parts and substituting instead the following language, and is further amended by deleting part (3) (d) 2. in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (a), the new subparagraph (3) (d) but not its parts, and the new part (3) (d) 2. shall read:

- (3) (a) Have submitted directly to the Board's administrative office a validly issued and error-free "Comprehensive Credential Evaluation Certificate for the Physical Therapist" (Type 1 Certificate) from the Foreign Credentialing Commission on Physical Therapy (FCCPT) for the purpose of evaluating and verifying that the applicant's education is substantially equivalent to the curriculum provided by an accredited educational program.
  - 1. Submitting the "Visa Credential Verification Certificate," also issued by the FCCPT, will not constitute meeting this requirement.
  - 2. Applicants who cannot obtain a Type 1 Certificate from the FCCPT based on their ineligibility to sit for the Test of Written English (TWE), the Test of Spoken English (TSE), and the Test of English as a Foreign Language (TOEFL) must submit all other components of the Type 1 Certificate directly to the Board's administrative office, for the purpose of evaluating and verifying that the applicant's education is substantially equivalent to the curriculum provided by an accredited educational program.
- (3) (d) After receiving written approval from the Board regarding the credentials in subparagraph (a), have participated in and successfully completed a Committee-approved supervised clinical practice period to provide a broad exposure to general physical therapy skills, pursuant to guidelines approved and issued by the Committee.
- (3) (d) 2. The supervising licensed physical therapist shall submit the evaluation form contained in the guidelines supplied by the Committee to the Board's administrative office upon completion of the supervisory period.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-304, 63-13-307, and 63-13-311.

Rule 1150-1-.05, Procedures for Licensure, is amended by deleting subparagraph (4) (b) its entirety and substituting instead the following language, so that as amended, the new subparagraph (4) (b) shall read:

- (4) (b) It is the applicant's responsibility to have his professional education evaluated and verified as equivalent by a credentialing agency approved by the Committee, pursuant to Rule 1150-1-.04. No applicant shall be approved for licensure as a physical therapist or physical therapist assistant until the Committee is satisfied that the applicant's education is substantially equivalent to the requirements of accredited educational programs.



**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-304, and 63-13-307.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of August, 2003. (08-13)

### **BOARD OF VETERINARY MEDICAL EXAMINERS - 1730**

There will be a hearing before the Tennessee Board of Veterinary Medical Examiners to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-12-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 26th day of November, 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 1730-1-.05, Procedures for Licensure, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (b) shall read:

- (1) (b) Applications for licensure must be submitted to the Board's administrative office at least one hundred (100) days prior to the examination date.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, and 63-12-112.

Rule 1730-1-.22, Recordkeeping, is amended by adding the following language as new subparagraph (1) (e), and is further amended by deleting subparagraphs (3) (c) and (3) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (e), (3) (c), and (3) (d) shall read:

- (1) (e) Any records containing information required by this rule shall be considered a medical record.
- (3) (c) Relevant medical and surgical procedures, including vaccinations given and lab reports, to the individual, group, or herd.
- (3) (d) A record of all drugs administered or dispensed, including quantity and withdrawal times.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-12-106.

Rule 1730-2-.03, Veterinary Facility Inspections to Obtain a Premises Permit, is amended by deleting paragraph (3) but not its subparagraphs, and substituting instead the following language, and is further amended by deleting part (3) (f) 4. in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) but not its subparagraphs, and the new part (3) (f) 4. shall read:

- (3) The minimum standard for all facilities, permanent or mobile, where veterinary medicine is practiced shall be:
  - (3) (f) 4. Dead animals not claimed within forty-eight (48) hours by the owner or agent shall be disposed at the discretion of the veterinarian.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-12-103, 63-12-106, 63-12-129, and 63-12-139.

Rule 1730-2-.04, Recordkeeping, is amended by adding the following language as new subparagraph (1) (e), and is further amended by deleting subparagraphs (3) (c) and (3) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (e), (3) (c), and (3) (d) shall read:

- (1) (e) Any records containing information required by this rule shall be considered a medical record.
- (3) (c) Relevant medical and surgical procedures, including vaccinations given and lab reports, to the individual, group, or herd.
- (3) (d) A record of all drugs administered or dispensed, including quantity and withdrawal times.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-12-106.

Rule 1730-2-.08, Small Animal Surgery, is amended by deleting subparagraphs (2) (a) and (2) (k) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (a) and (2) (k) shall read:

- (2) (a) The surgery room shall be clean, free of contaminants, orderly, well lighted, free of objectionable odors, and maintained in a clean and orderly condition.
- (2) (k) Safe and effective anesthesia shall be used appropriately for the surgical procedure being performed.
  - 1. There shall be a preanesthesia examination for all patients undergoing general anesthesia when possible.

2. Positive pressure ventilation with oxygen is available.
3. Endotracheal intubation is available.
4. A gas scavenger is used with the gas anesthesia machines.
5. A monitoring device is available.

*Authority:* T.C.A. §§4-5-202, 4-5-204, 63-12-106, 63-12-129, and 63-12-139.

Rule 1730-2-.08, Small Animal Surgery, is amended by deleting subparagraph (2) (d) in its entirety and renumbering the remaining subparagraphs accordingly.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-129, and 63-12-139.

Rule 1730-2-.14, Examination and Treatment Areas, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e) shall read:

- (1) (e) A sink with disposable towels shall be readily accessible.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-129, and 63-12-139.

Rule 1730-2-.16, Hospitalization, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Inpatients shall be examined at least once daily by facility personnel.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-129, and 63-12-139.

Rule 1730-2-.17, Provisions for Non-Provided Services, is amended by deleting paragraph (3) in its entirety and renumbering the remaining paragraphs accordingly:

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-129, and 63-12-139.

Rule 1730-5-.08, Renewal Application/Reinstatement of Expired Certificate, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (3), so that as amended, the new catchline and the new paragraph (3) shall read:

**1730-5-.08 RENEWAL APPLICATION AND REINSTATEMENT/REACTIVATION OF EXPIRED OR RETIRED CERTIFICATE.**

- (3) Retirement

- (a) C.A.E.T.s who wish to retire their license must complete and return to the Board's administrative office an Affidavit of Retirement form indicating one (1) of the following:
  - 1. Permanent retirement of the license to practice as a C.A.E.T.
  - 2. Retirement of the Tennessee license to practice as a C.A.E.T. in another state.
  - 3. Retirement of the Tennessee license to practice as a C.A.E.T. in order to seek other types of employment.
- (b) When a certificate holder who has retired a Tennessee veterinary license to practice as a C.A.E.T. in another state wishes to reactivate the Tennessee license, said certificate holder must show evidence of the following:
  - 1. Evidence of good standing where the retiree holds a certificate.
  - 2. Evidence of continuous practice during the period of retirement of the Tennessee certificate.
- (c) C.A.E.T.s who have not engaged in continuous practice during the retirement of a certificate must appear before the board for an oral examination.
- (d) Certification reactivation applications shall be treated as certification applications and review and decisions required by this Rule shall be governed by Rule 1730-5-.05.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-1-111, 63-12-103, 63-12-106, and 63-12-141.

## NEW RULE

### TABLE OF CONTENTS

1730-1-.23 Consumer Right-To-Know Requirements

#### **1730-1-.23 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.**

- (1) Malpractice Reporting Requirements - The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be set by statute, as provided in T.C.A. § 63-51-105.
- (2) Criminal Conviction Reporting Requirements - For purposes of the "Health Care Consumer Right-To-Know Act of 1998," the following criminal convictions must be reported:
  - (a) Conviction of any felony; and
  - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one (1) or more of the following:

1. Sex.
  2. Alcohol or drugs.
  3. Physical injury or threat of injury to any person or any animal.
  4. Abuse or neglect of any minor, spouse or the elderly, or abuse of any animal.
  5. Fraud or theft.
- (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

*Authority:* T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-51-101, *et seq.*, and Public Chapter 272 of the Public Acts of 2003.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of August, 2003. (08-12)

### **TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Cedar Bluff Holiday Inn, located at 304 Cedar Bluff Road, Knoxville, Tennessee, commencing at 9:00 A.M., local time, on the 30th day of October, 2003.

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

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

### **SUBSTANCE OF PROPOSED RULES**

#### **AMENDMENT**

Rule 1660-2-7-.18 Tellico Reservoir shall be amended by adding paragraph five (5), which shall read as follows:

- (5) Tellico-Ft. Loudoun Canal: On holidays and weekends from May 15 through Labor Day, all vessels operating in the designated area marked with buoys and or signs, within the area known as the Tellico-Ft. Loudoun Canal, at approximately Little Tennessee River Miles 0 to .75, shall operate at a Slow, No-wake speed as indicated by informational signs. Further, the towing of persons on water-skis, tubes, and similar devices within the marked area is prohibited.

**Authority:** *T.C.A. §§70-1-206, 69-10-209.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of August, 2003.  
(08-32)

## WILDLIFE PROCLAMATIONS

### TENNESSEE WILDLIFE RESOURCES COMMISSION PROCLAMATION - 1660

#### MIGRATORY BIRD HUNTING REGULATIONS

##### 2003-2004 SEASON

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Section 70-4-107 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following migratory bird hunting regulations effective October 1, 2003: Season dates and limits pending final Federal Frameworks.

#### SECTION I. HUNTING SEASONS

Species	Season Opens	Season Closes
A. Ducks, Coots, and Mergansers		
Reelfoot Duck Zone	Nov. 27	Jan. 25
Pintail	Dec. 27	Jan. 25
Canvasback	Dec. 27	Jan. 25
Reelfoot Duck Zone shall include the waters of Reelfoot Lake.		
Remainder of State	Nov. 27	Jan. 25
Pintail	Dec. 27	Jan. 25
Canvasback	Dec. 27	Jan. 25
B. Youth Waterfowl Hunting Season		
	2-Days Only	
Reelfoot Duck Zone	Jan. 31	Feb. 1
Remainder of State	Jan. 31	Feb. 1

Youth waterfowl hunters must be 15 years of age or younger. An adult at least 18 years of age must accompany the youth hunter into the field. This adult cannot duck hunt but may participate in other open seasons. Geese, coots, gallinules, moorhens, and ducks, including pintails, may be taken by youths during Youth Waterfowl Season, but canvasback season is closed during Youth Waterfowl Season.

C. Purple Gallinules and Common Moorhens		
Reelfoot Duck Zone	Nov. 27	Jan. 18
Remainder of State	Nov. 27	Jan. 18

**Section I. Hunting Seasons (Cont.)**

Species	Season Opens	Season Closes
D. Virginia Rails and Sora Rails		
Reelfoot Duck Zone	Nov. 27	Jan. 20
Remainder of State	Nov. 27	Jan. 20
E. White-fronted Geese	Nov. 22	Feb. 15
F. Blue, Snow, and Ross' Geese	Nov. 15	Feb. 29
G. Brant	Nov. 27	Jan. 31
H. Canada Geese		
1. Northwest MVP Zone: Mississippi Valley Population Lake, Obion, and Weakley Counties, and Those Portions of Gibson and Dyer Counties Not Included in the Southwest MVP Zone.	Dec. 6	Feb. 15
2. Southwest MVP Zone: Mississippi Valley Population That portion of the state bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45.	Dec. 13	Jan. 31
3. Kentucky/Barkley Lake Zone: Southern James Bay Population That area west of Highway 13 not in the Northwest and Southwest MVP Zones.	Dec. 13	Jan. 31
4. Remainder of the State:	Oct. 4 Nov. 27	Oct. 13 Jan. 25

The Remainder of the State includes all counties or portions of counties east of State Highway 13.

**SECTION II. SHOOTING HOURS**

From ½ hour before sunrise to sunset daily, for all species and seasons



**SECTION III. BAG AND POSSESSION LIMITS****A. Ducks and Mergansers****Daily Bag Limit:**

The Daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be a female), 1 black duck, 2 wood ducks, 1 pintail (last 30 days of season), 1 canvasback (last 30 days of season), 3 scaup, and 2 redheads. The daily bag limit of merganser is 5, only 1 of which may be a hooded merganser.

**Possession Limit:**

The maximum number of birds which could have legally been taken in two (2) days.

	Daily Bag	Possession
B. Coots and Gallinules	15	30
C. Virginia and Sora Rails	25	25
D. Blue and Snow Geese	20	No Limit
E. White-fronted Goose	2	4
F. Brant	2	4
G. Canada Goose	2	4

**SECTION IV. REPEAL OF PRIOR PROCLAMATION**

This proclamation repeals Proclamations No. 02-15, dated August 29, 2002.

Proclamation No. 03-17, received and recorded this 28th day of August, 2003. (08-29)

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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 August 1, 2003 and ending August 29, 2003..*

*Riley C. Darnell*  
RILEY C. DARNELL  
*Secretary of State*

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