

TAAAR



January 15, 2004
Volume 30, Number 1

RILEY C. DARNELL
Secretary of State

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

DEPARTMENT OF STATE NONDISCRIMINATION POLICY STATEMENT

Pursuant to its policy of nondiscrimination, the Department of State does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its policies, or in the admission or access to, or treatment or employment in, its programs, services, or activities.

Equal Employment Opportunity/Affirmative Action inquiries or complaints should be directed to the Department of State, Bard G. Fisher, EEO/AA Coordinator, 7th Floor, Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN, 37243-0311 or call (615) 741-7411, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. ADA inquiries or complaints should be directed to Mr. Fisher at the above mentioned location.

PUBLIC INSPECTION OF DOCUMENTS

A certified copy of each document filed with the Department of State, Division of Publications is available for public inspection from 8 A.M. to 4:30 P.M., Monday through Friday. Copies of documents may be made at a cost of 25 cents per page and \$2 for the certification page, payable in advance if requested. The Division of Publications is located on the Eighth Floor, Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 37243 - 0310. Telephone inquiries may be made by calling (615) 741-0522, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. Individuals with disabilities who wish to inspect these filings should contact the Division of Publications to discuss any auxiliary aids or services needed to facilitate such inspection. Such contact may be made in person, by writing, telephonically or otherwise and should be made at least ten (10) days in advance of the date such party intends to make such inspection to allow time for the Division of Publications to provide such aid or service.

Department of State, Authorization No. 305197, 275 copies, January 2004. This public document was promulgated at a cost of \$ 4.39 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*.

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

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

Reproduction - There are no restrictions on the reproduction of official documents appearing in the Tennessee Administrative Register.

blank

pg. iv

TABLE OF CONTENTS

ANNOUNCEMENTS

Financial Institutions, Department of	
Announcement of Formula Rate of Interest	1
Correction to January Announcement of Maximum Effective Rate of Interest	1
Announcement of Maximum Effective Rate of Interest	1
Government Operations Committees	
Announcement of Public Hearings	2
Health Services and Development Agency	
Notice of Beginning of Review Cycle	8

EMERGENCY RULES

Emergency Rules Now in Effect	11
Mental Health and Developmental Disabilities, Department of	11

PROPOSED RULES

Human Services, Department of	15
Student Assistance Corporation	20

PUBLIC NECESSITY RULES

Public Necessity Rules Now in Effect	41
Student Assistance Corporation	41

RULEMAKING HEARINGS

Commerce and Insurance, Department of	63
Environment and Conservation, Department of	69
Fire Fighting Personnel, Commission on	70
Health, Department of	77
Mental Health and Developmental Disabilities	79
Veterinary Medical Examiners, Board	97

WILDLIFE PROCLAMATIONS

03-18	101
-------------	-----

CERTIFICATION	107
---------------------	-----

CHANGE OF ADDRESS FORM	109
------------------------------	-----

blank

pg. vi

ANNOUNCEMENTS

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.

Kevin P. Lavender

THE DEPARTMENT OF FINANCIAL INSTITUTIONS - 180

CORRECTION FOR THE ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Department of Financial Institutions submitted a correction to last month's filing (12 T.A. R. 2003). The correct rate for the Maximum Effective Rate of Interest for the month of January 2004 is 9.12 percent per annum.

THE 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 February 2004 is 9.08 percent 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 5.08 percent.

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.

Kevin P. Lavender

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the month of December 2003. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

ANNOUNCEMENTS

3

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-03	Dec 2, 2003	1200 Health Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-1 Standards for Hospitals</i> 1200-8-1-.02, Licensing Procedures 1200-8-1-.06, Basic Hospital Functions	Ernest Sykes, Jr. OGC 26th FI TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Feb 15, 2004
12-04	Dec 4, 2003	0260 Chiropractic Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0260-2 General Rules Governing Chiropractic Examiners</i> 0260-2-.12 Continuing Education <i>Chapter 0260-3 General Rules Governing Chiropractic X-Ray Technologists</i> 0260-3-.12 Continuing Education <i>Chapter 0260-5 General Rules Governing Chiropractic Therapy Assistants</i> 0260-5-.12 Continuing Education	Robert J. Kraemer Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Feb 17, 2004
12-05	Dec 4, 2003	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendment	<i>Chapter 1050-3 General Rules and Regulations Governing Utilization of X-Ray Operators in Osteopathic Physicians' Offices</i> 1050-3-.06 Fees	Robert J. Kraemer Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Feb 17, 2004
12-06	Dec 5, 2003	0880 Medical Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0880-2 General Rules and Regulations Governing the Practice of Medicine</i> 0880-2-.02 Fees 0880-2-.03 Licensure Process-U.S. and Canada Medical School Graduates 0880-2-.04 Licensure Process-International Medical School Graduates 0880-2-.05 Licensure of Out-of State and International Applicants 0880-2-.06 Training Licenses and Licensure Exemptions 0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure	Robert J. Kraemer Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Feb 18, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-06, cont.					0880-2-.08 Examinations		
12-07	Dec 5, 2003	1200 Health Board of Alcohol and Drug Abuse Counselors	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-30-1 Rules Governing Licensure of Alcohol and Drug Abuse Counselors</i> 1200-30-1-.10 Supervision	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37243 (615) 741-1611	Feb 18, 2004
12-08	Dec 5, 2003	1330 Respiratory Care	Rulemaking Hearing Rules	Amendments	<i>Chapter 1330-1 General Rules Governing Respiratory Care Practitioners</i> 1330-1-.05 Qualifications and Procedures for Licensure Fees 1330-1-.06 1330-1-.21 Upgrading Classification Requirements	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37243 (615) 741-1611	Feb 18, 2004
12-09	Dec 5, 2003	0400 Environment and Conservation Solid Waste Management	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-18 Lead-Based Paint Abatement</i> 1200-1-18-.01 Lead-Based Paint Abatement	Adrienne White Solid Waste Mgmt 5th Fl, L&C Twr 401 Church St Nashville TN 37243-1531 (615) 532-0885	Feb 18, 2004
12-10	Dec 5, 2003	1240 Human Services Rehabilitation Services Division	Proposed Rules	Amendments	<i>Chapter 1240-8-10 Personal Care Assistance Program</i> 1240-8-10-01 Legal Basis 1240-8-10-02 Definitions 1240-8-10-03 Purpose Or Scope 1240-8-10-04 General Eligibility Requirements 1240-8-10-05 Application; Eligibility Determination 1240-8-10-06 Personal Care Assistance Re-evaluations 1240-8-10-08 Authorization And Billing Procedure 1240-8-10-09 Rate Of Payment For PCA Services 1240-8-10-10 Responsibilities Of Clients Receiving PCA Services 1240-8-10-11 Annual Financial Review 1240-8-10-12 Comparable Benefits 1240-8-10-13 Termination Of Services	Phyllis A. Simpson Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37243 (615) 313-4731	April 29, 2004

ANNOUNCEMENTS

5

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-10, cont.					1240-8-10-.14 Appeals Process		
12-12	Dec 9, 2003	0940 Mental Health and Developmental Disabilities Office of Licensure	Emergency Rules	New Rules	<i>Chapter 0940-5-36 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	Anita M. Daniels Mental Health and Developmental Disabilities 5th Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 532-6524	Dec 9, 2003 through May 22, 2004
12-14	Dec 12, 2003	1200 Health Services Administration	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program</i> 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 TN Twr 26th Fl 312 8th Ave North Nashville TN 37247-0120 (615) 741-1611	Feb 25, 2004
12-15	Dec 16, 2003	0400 Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 09-504	Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville TN 37243-1538 (615)532-0916	Feb 29, 2004
12-16	Dec 16, 2003	0400 Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 33-541	Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville TN 37243-1538 (615)532-0916	Feb 29, 2004
12-17	Dec 16, 2003	0400 Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 27-501	Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville TN 37243-1538 (615)532-0916	Feb 29, 2004
12-18	Dec 16, 2003	0400 Environment and Conservation Superfund	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13 Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites 27-501	Robert L. Powell Division of Superfund 4th Fl Annex, L & C Bldg Nashville TN 37243-1538 (615)532-0916	Feb 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-18, cont.	Dec 16, 2003	Conservation Superfund			Hazardous Substance Sites 09-504		
12-19	Dec 18, 2003	0260 Chiropractic Examiners	Rulemaking Hearing Rules	New Rule	Chapter 0260-2 General Rules Governing Chiropractic Examiners 0260-2-.24 Chiropractic Professional Corporations and Chiropractic Professional Limited Liability Companies	Robert J. Kraemer Health OGC 26th Fl TN TWR 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	March 2, 2004
12-20	Dec 19, 2003	1240 Human Services Family Assistance Division	Rulemaking Hearing Rules	Repeals Amendments	Chapters 0260-4-1 and 0260-4-2 Chapter 1240-1-47 Non-Financial Eligibility Requirements Families First Program 1240-1-47-.10 Eligible Aliens Chapter 1240-1-49 Families First Employment and Training 1240-1-49-04 Failure To Comply, Conciliation, Good Cause, And Sanctions	Phyllis A. Simpson Assistant General Counsel Citizens Plaza Bldg., 15th Fl 400 Deaderick St Nashville Tennessee 37248 (615) 313-2266	March 3, 2004
12-21	Dec 23, 2003	0400 Environment and Conservation Bureau of Environment Air Pollution Control	Rulemaking Hearing Rules	Amendment	Chapter 1200-3-18 Volatile Organic Compounds 1200-3-18-.24 Gasoline Dispensing Facilities-Stage I And Stage II Vapor Recovery	Ms. Lacey Hardin Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville TN 37243-1531 (615) 532-0545	March 7, 2004
12-22	Dec 29, 2003	1640 Student Assistance Corporation	Proposed Rules		Chapter 1640-1-19 Tennessee Education Lottery Scholarship Program 1640-1-19-.01 Definitions 1640-1-19-.02 Scholarship Award Amounts and Classifications 1640-1-19-.03 Application Process 1640-1-19-.04 General Eligibility 1640-1-19-.05 Eligibility – Tennessee Hope Scholarship 1640-1-19-.06 Eligibility – Tennessee Hope Scholarship Need Based Supplemental Award	Will Burns TN Higher Education Commission Suite 1900 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243 (615) 741-7571	April 29, 2004

ANNOUNCEMENTS

7

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
12-22, cont.					<p>1640-1-19-.07 Supplemental Award Eligibility – General Assembly Merit Scholarship</p> <p>1640-1-19-.08 Eligibility – Tennessee Hope Access Grant</p> <p>1640-1-19-.09 Eligibility – Wilder-Naifeh Technical Skills Grant</p> <p>1640-1-19-.10 Retention of Awards – General Requirements</p> <p>1640-1-19-.11 Retention of Awards – Tennessee Hope Access Grant</p> <p>1640-1-19-.12 Tennessee Education Lottery Scholarship Award Process</p> <p>1640-1-19-.13 Continuation of Tennessee Education Lottery Scholarship Award</p> <p>1640-1-19-.14 Award Made in Error Refund Policy</p> <p>1640-1-19-.15 Refund Policy</p> <p>1640-1-19-.16 Converting from Full-time to Part-time Enrollment Personal or Medical Leave of Absence</p> <p>1640-1-19-.17 Military Mobilization of Eligible Students</p> <p>1640-1-19-.18 Calculation of Postsecondary Cumulative Grade Point Average</p> <p>1640-1-19-.20 Transfer Students</p> <p>1640-1-19-.21 Transient Students</p> <p>1640-1-19-.22 Denial of Initial Eligibility – Failure to Timely Enroll</p> <p>1640-1-19-.23 Appeal and Exception Process</p>		
12-23	Dec 29, 2003	1640 Student Assistance Corporation	Public Necessity Rules	New Rules	Chapter 1640-1-19 Tennessee Education Lottery Scholarship Program Same as 12-22 above	Same as 12-22 above.	Dec 29, 2003 through June 11, 2004

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

Applications will be heard at the February 25, 2004
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 December 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
Volunteer Home Care, Inc. 1501 Main Street Humboldt (Gibson), TN 38343 CN0311-094 Contact Person: Anita Porter, RN, Clinical Services Phone No. 931-762-6335	The addition of Lake County to the existing service area of Gibson, Crockett, Carroll, Dyer, Henry, Stewart, Houston, Humphreys, Weakley, Obion and Benton County for home health services. \$ 7,000.00
Paris Manor Nursing Center 5 Acre Lot on Volunteer Drive Paris (Henry), TN 38242 CN0311-096 Contact Person: Donald B. Ross, Executive V.P. Phone No. 615/377-9191	The relocation and replacement of an existing nursing center from its current location of 1000 Old Paris Murray Road, Paris (Henry County), Tennessee to a five (5) acre lot located one-fourth of a mile from the Henry County Medical Center on Volunteer Drive in Paris (Henry County), Tennessee. The replacement facility will contain 120 dually certified nursing home in lieu of the existing 135 beds dually certified nursing home beds. \$ 5,063,000.00

NAME AND ADDRESS	DESCRIPTION
<p>Wellmont Hawkins County Memorial Hospital 851 Locust Street Rogersville (Hawkins), TN 37857 CN0311-097 Contact Person: Troy Clark, Director, Strategic Dev. Phone No. 423/230-8209</p>	<p>The establishment of a ten (10)-bed inpatient geriatric psychiatric unit and the initiation of geriatric inpatient psychiatric services. If approved, the project will not add or increase new licensed hospital beds – ten (10) of forty (40) existing medical/surgical beds will be converted and minor modifications completed in approximately 4,000 square feet of existing space to accommodate the geriatric psychiatric unit. No major medical equipment will be purchased and no new licensed beds are requested. If approved, the bed complement of the facility will be thirty (30) medical/surgical beds, ten (10) swing beds and ten (10) geriatric psychiatric beds for a total general /pediatric licensed hospital bed complement of fifty (50) beds. \$ \$275,000.00</p>
<p>Memphis Orthopaedic Group, P.C. 3980 New Covington Pike, Suite 204 Memphis (Shelby), TN 38128 CN0311-099 Contact Person: Dan Hein, Assistant Administrator Phone No. 901/937-2320</p>	<p>The initiation of magnetic resonance imaging (MRI) services limited to the patients of Memphis Orthopaedic Group, P.C. and the acquisition of a MRI unit. \$ \$1,819,000.00</p>
<p>Unity Hospice Care 9057 Valley Crest Lane, Suite 102 Memphis (Shelby), TN 38138 CN0311-100 Contact Person: John Wellborn, Consultant Phone No. 615/665-2022</p>	<p>The establishment of a home care organization providing hospice services to the counties of Shelby, Fayette and Tipton. The office will be located in leased space at 9057 Valley Crest Lane, Suite 102, Memphis, Tennessee. \$ \$59,500.00</p>
<p>Diagnostic PET/CT of Chattanooga 2205 McCallie Avenue (unofficial) Chattanooga (Hamilton), TN 37404-3230 CN0311-102 Contact Person: Michael D. Brent, Esq. Phone No. 615/252-2361</p>	<p>The establishment of an outpatient diagnostic center (ODC), the acquisition of a positron emission tomography (PET) and computerized tomography (CT) combination unit, and the initiation of PET/CT scanning services. \$ \$3,284,060.00</p>
<p>Middle Tennessee Surgical Care, LLC 145 Health Way McMinnville (Warren), TN 37110 CN0311-104 Contact Person: Stan Bullen, Manager Phone No. 931/808-4303</p>	<p>The addition of one (1) operating room (OR) to an existing two (2) OR ambulatory surgical treatment center. Upon completion the three (3) OR facility will be operated five (5) days per week. \$ \$51,000.00</p>

blank

pg. 10

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 1660 - Wildlife Resources Commission - Emergency rules regarding waterway zoning on Ft. Loudoun Lake, chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels, 10 T.A.R. (October 2003) - Filed September 4, 2003; effective through February 16, 2003. (09-07)

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

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to Tenn. Code Ann., § 4-5-208, I am promulgating emergency licensure rules covering personal support services agencies. The rules are necessary to license agencies that provide personal assistance to service recipients who have substantial limitations in two or more major life activities due to chronic conditions. Such activities include but are not limited to self-care and mobility.

I have made the finding that there is an emergency creating a danger to the public welfare in that services recipients are not receiving needed personal support services. Specifically, some service recipients are not receiving assistance with feeding and bathing. Therapy orders cannot be carried out because the person has not been bathed or fed. This places the person in imminent danger of recurring health problems. Additionally, elderly parents are not receiving relief from having to lift adult offspring who are quadriplegic, or relief from providing 24-hour supervision for adult offspring with severe seizure disorder.

Therefore, unless emergency licensure rules for personal support services agencies are adopted, the health and safety of persons who need personal support services will be in danger. The rules require services to be delivered by qualified staff according to the service recipient's needs.

Arthur L. Hyde, Director
Office of Licensure

**EMERGENCY RULES
OF
THE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES**

**CHAPTER 0940-5-36
PERSONAL SUPPORT SERVICES**

NEW RULES

TABLE OF CONTENTS:

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-.03	Personnel Requirements	0940-5-36-.05	Service Recipient Record 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 emergency rules set out herein were properly filed in the Department of State on the 9th day of December, 2003, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 22nd day of May, 2004. (12-12)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240 REHABILITATION SERVICES DIVISION

CHAPTER 1240-8-10 PERSONAL CARE ASSISTANCE PROGRAM

Presented herein are proposed amendments of the Department of Human Services 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 a hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Office of the General Counsel, 15th Floor, Citizens Plaza State Office Building, 400 Deaderick Street, Nashville, Tennessee 37248-0006, 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 by a majority vote of any standing committee of the General Assembly.

For a copy of the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731 (TTY)-(800) 270-1349.

AMENDMENTS

Rule 1240-8-10-.01 Legal Basis, is amended to replace the obsolete authority reference for the Rehabilitation Act of 1973 in the rule with the updated authority reference, so that as amended, the rule shall read:

1240-8-10-.01 LEGAL BASIS. Tennessee Code Annotated, Title 71, Chapter 4, Part 12; Rehabilitation Act of 1973, as amended, Sections 101(a)(6) and 103(a) (29 U.S.C. §§ 701(a)(6) and 723 (a)); Code of Federal Regulations, Title 34, Sections 361.42; and Code of Federal Regulations, Title 20, Section 404.1576.

Authority: *T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq*

Rule 1240-8-10-.02 Definitions, is amended to replace the word “severe” with the word “significant” in Paragraph (5), so that as amended, Paragraph (5), Subparagraphs (a) through (g), shall read:

- (5) “Personal Care Assistant Services” (PCA) means services rendered at least five (5) days a week at the times of day, which are required by an individual with a significant physical disability, to become physically independent in connection with actual employment. These services include, but are not limited to:
 - (a) Routine bodily functions, personal hygiene, bowel or bladder care;
 - (b) Dressing;

- (c) Preparation and consumption of food;
- (d) Moving into, out of, or turning in bed;
- (e) Bathing;
- (f) Ambulation and/or mobility;
- (g) Any other similar activity of daily living as determined appropriate by the Division.

Authority: *T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.*

Rule 1240-8-10-.02 Definitions, is amended to replace the words “Severe Physical Disability” with the words “Significant Physical Disability” in Paragraph (6), so that as amended, Paragraph (6) shall read:

- (6) “Significant Physical Disability” means a functional loss of both arms and both legs when it is anticipated that the loss will be permanent.

Authority: *T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.*

Rule 1240-8-10-.03 Purpose Or Scope, is amended to replace the word “clients” with the word “ individuals” and the words “severely handicapped” with the words “significantly disabled” in Paragraphs (1) and (2), so that as amended, Paragraphs (1) and (2) shall read:

- (1) These rules describe policies and procedures for providing participant-directed Personal Care Assistance (PCA) services to eligible individuals through the Division state-funding program. The Program provides participant-directed PCA services to significantly disabled persons to enable them to enter or maintain remunerative employment. The Program is designed for individuals who are employed or are ready for employment (i.e., has a legitimate job offer), but who need Personal Care Assistance in order to be successful in their employment efforts. An individual must be determined to need PCA services for not less than fourteen (14) hours per week. PCA services subsidy is limited to forty (40) hours per week.
- (2) The PCA program provides subsidies to eligible individuals who are in financial need contingent upon the availability of funds. Eligible individuals are accepted into program so long as funds are available. When funds are exhausted, applications will continue to be taken, PCA evaluations performed, and the applications forwarded to the Central Office. A waiting list of eligible individuals will be established and maintained by the State Coordinator. Eligible individuals will be placed on the PCA program waiting list in order of the date and time their application was received. When sufficient funds become available, eligible individuals will receive services in the order they appear on the waiting list.

Authority: *T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.*

Rule 1240-8-10-.04 General Eligibility Requirements, Paragraph (2) is amended to replace the word “severe” with the word “significant”, so that as amended, Paragraph (2) shall read:

- (2) Has a significant disability;

Authority: *T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.*

Rule 1240-8-10-.05 Application; Eligibility Determination, is amended to replace the word “client” with the word “individual” in Paragraphs (3) through (6), so that as amended, Paragraphs (3) through (6) shall read:

- (3) If the applicant meets the financial needs test, the DRS staff member will arrange for a PCA evaluation by the eligibility evaluation team, to determine if a need for the PCA service exists and, if so, the approximate number of hours per week. Based on the evaluation, the eligibility evaluation team establishes the number of hours of subsidy per week the individual is to receive, and a PCA Service Plan (Form PCA-3) is developed. The non-financial eligibility determination and the determination of the hours of subsidy per week is based upon the best professional judgment of the team members. Factors that will be considered include the individual’s ability or inability to perform normal daily tasks (as enumerated in Form PCA-4) and time required to perform each.
- (4) The individual is notified in writing of his/her eligibility for a subsidy. The individual and the DRS staff member sign the service plan. If funds are available, subsidy authorizations are issued by the DRS staff member.
- (5) If funds are not available, the individual is notified of same in writing by the DRS staff member and given a priority standing based upon date of application.
- (6) If the individual is determined ineligible to receive a PCA subsidy, he/she is notified in writing. The notice will specify the reason for ineligibility, and the right to appeal, as provided in 1240-8-10-.14.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

1240-8-10-.06 Personal Care Assistance Re-evaluations, is amended to replace the obsolete authority reference with the updated authority reference after the rule, so that as amended the authority shall read:

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

Rule 1240-8-10-.08 Authorization And Billing Procedure, is amended to replace the word “client” with the word “individual”, so that as amended, the rule shall read:

1240-8-10-.08 AUTHORIZATION AND BILLING PROCEDURE. When PCA program eligibility has been established, along with the amount of service time needed and a plan has been developed, an authorization will be issued to the individual by the DRS staff member on a monthly basis. The individual shall be provided with a sufficient quantity of “time logs” to be completed and submitted with the authorization to the State Coordinator by the 15th of the following month. Any overpayment resulting from the advance payment system must be repaid by the individual.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

Rule 1240-8-10-.09 Rate Of Payment For PCA Services, Paragraph (2) is amended to replace the word “client” with the words “eligible individual”, so that as amended, Paragraph (2) shall read:

- (2) If the eligible individual is responsible for a portion of the cost of PCA services, the amount of the subsidy will be determined by the State Coordinator.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

Rule 1240-8-10-.10 Responsibilities Of Clients Receiving PCA Services, is amended by replacing the word “clients” with the word “individuals” in the catchline and in the sentence immediately following the catchline, so that as amended the rule with its Paragraphs (1) through (5) shall read:

1240-8-10-.10 RESPONSIBILITIES OF INDIVIDUALS RECEIVING PCA SERVICES. Individuals receiving PCA services as a condition of eligibility for receipt of the subsidy are responsible for the following:

- (1) Selecting, hiring, training, and supervising their own personal care attendant. A family member, as defined herein, may not be employed as a personal care attendant.
- (2) Preparing and submitting time logs, authorizations and other paperwork as directed by the DRS staff member or state coordinator.
- (3) Paying the personal care attendant and accepting full responsibility for the necessary employee withholding of Social Security and Federal income tax (if applicable in case of the latter) from the PCA subsidy.
- (4) Maintaining a financial record of payment.
- (5) Promptly notifying the DRS of any problems, or change in the need for PCA services or change in financial status.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

Rule 1240-8-10-.11 Annual Financial Review, is amended to replace the word “client” with the word “individual”; to substitute in the place of the word “Counselor” the words “DRS staff” in the second sentence; and to replace the calendar months with new calendar months, so that as amended the rule shall read:

1240-8-10-.11 ANNUAL FINANCIAL REVIEW. Any significant changes in financial status must be reported by the individual throughout the year as provided in rule 1240-8-10-.10(5). In addition, a form PCA-2 will be sent to all individuals by the DRS staff in February of each year. This form is designed to update individual financial status, and must be completed and returned by June 30th of that year. Failure by the individual to complete and return the PCA-2 is a reason for termination of PCA services. Individuals applying after March 1st of a year will not be subject to the annual financial review until June 30th of the year following the first full year of service.

Authority: T.C.A. §4-5-201 et seq. and 71-4-1201 et seq.

Rule 1240-8-10-.12 Comparable Benefits, is amended to replace the word “client” with the word “individual,” so that as amended the rule shall read:

1240-8-10-.12 COMPARABLE BENEFITS. If an individual is eligible for PCA services from any other program such as Medicaid, VA, Worker’s Compensation, etc., such comparable benefits must be used prior to obligating PCA special program funds. The PCA special program may be used to supplement other programs for which the individual is eligible, subject to a maximum of \$240 per week.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

Rule 1240-8-10-.13 Termination Of Services, is amended to replace the word “client” with the word “individual”, so that as amended the rule shall read:

1240-8-10-.13 TERMINATION OF SERVICES. The PCA subsidy may be terminated whenever a recipient fails to meet any of the eligibility requirements outlined in this chapter. If the subsidy is to be terminated, the State Coordinator will notify the individual in writing at least thirty (30) days prior to termination, giving the reasons for the termination and the effective date.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

Rule 1240-8-10-.14 Appeals Process, Paragraph (2) is amended to replace the words “Individualized Written Rehabilitation Plan” with the words “Individualized Plan for Employment”, so that as amended Paragraph (2) shall read:

- (2) No applicant/recipient of services pursuant to this chapter may request review by the Secretary of the Federal Department of Education pursuant to 34 CFR § 361.48, unless he/she is being provided vocational rehabilitation services under an Individualized Plan for Employment pursuant to Title I of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq.

The proposed rules set out herein were properly filed in the Department of State on the 5th day of December 2003 and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition for a rulemaking hearing, will become effective on the 29th day of April, 2004. (12-10)

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

CHAPTER 1640-1-19

TENNESSEE EDUCATIONAL LOTTERY SCHOLARSHIP PROGRAM

Presented herein new rules of the Tennessee Student Assistance Corporation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation 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 1950 of Parkway Towers located at 404 James Robertson Parkway, Nashville, Tennessee 37243 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: Lora Daniels, Suite 1950, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, (615) 741-1346.

The text of the proposed rules is as follows:

NEW RULES

TABLE OF CONTENTS

1640-1-19-.01	Definitions	1640-1-19-.13	Continuation of Tennessee Education Lottery Scholarship Award
1640-1-19-.02	Scholarship Award Amounts and Classifications	1640-1-19-.14	Award Made in Error
1640-1-19-.03	Application Process	1640-1-19-.15	Refund Policy
1640-1-19-.04	General Eligibility	1640-1-19-.16	Converting from Full-time to Part-time Enrollment
1640-1-19-.05	Eligibility – Tennessee Hope Scholarship	1640-1-19-.17	Personal or Medical Leave of Absence
1640-1-19-.06	Eligibility – Tennessee Hope Scholarship Need Based Supplemental Award	1640-1-19-.18	Military Mobilization of Eligible Students
1640-1-19-.07	Eligibility – General Assembly Merit Scholarship	1640-1-19-.19	Calculation of Postsecondary Cumulative Grade Point Average
1640-1-19-.08	Eligibility – Tennessee Hope Access Grant	1640-1-19-.20	Transfer Students
1640-1-19-.09	Eligibility – Wilder-Naifeh Technical Skills Grant	1640-1-19-.21	Transient Students
1640-1-19-.10	Retention of Awards – General Requirements	1640-1-19-.22	Denial of Initial Eligibility – Failure to Timely Enroll
1640-1-19-.11	Retention of Awards – Tennessee Hope Access Grant	1640-1-19-.23	Appeal and Exception Process
1640-1-19-.12	Tennessee Education Lottery Scholarship Award Process		

1640-1-19-.01 DEFINITIONS

- (1) Academic Year: Three consecutive semesters that begins with the fall semester and ends with the summer semester.
- (2) ACT: The ACT Assessment administered by ACT, Inc.
- (3) Adjusted Gross Income Attributable to the Student or Student's Adjusted Gross Income:
 - (a) The adjusted gross income of the student's parent or parents as reported on the student's Free Application for Federal Student Aid (FAFSA) and used by the Corporation in determinations of eligibility for federal or state financial aid, if the student is a dependent of a parent or parents as defined by FAFSA; or
 - (b) The adjusted gross income of the student and, if applicable, the student's spouse as reported on the student's FAFSA and used by the Corporation in determinations of eligibility for federal or state financial aid, if the student is independent of parents as defined by FAFSA.
- (4) Alternative Study Program: Program of study including, but not limited to student exchange programs, practicum, co-op programs and internships, that includes travel outside the State of Tennessee that is sponsored or offered by:
 - (a) an eligible postsecondary institution; or
 - (b) an eligible postsecondary institution in conjunction with either another eligible postsecondary institution or a postsecondary institution that is accredited by a regional accrediting association.
- (5) Award Year: Three consecutive semesters that begins with the fall semester and ends with the summer semester.
- (6) Board of Regents: The Board of Regents of the State University and Community College System of Tennessee.
- (7) Certificate or Diploma: A credential, other than a degree, the receipt of which indicates satisfactory completion of training in a program of study offered by a Tennessee Technology Center operated by the Board of Regents.
- (8) Continuing Education: Courses and programs that do not lead to a certificate, diploma or degree that are designed for personal development and are an extension of the traditional on-campus learning process.
- (9) College Core Curriculum: The high school courses in the "Core Curriculum" and "University Preparation Curriculum" approved by the Tennessee State Board of Education in Rule 0520-1-3-.06(1)(b), excluding non-core course electives.
- (10) Continuous Enrollment: A student is enrolled for at least two of each three consecutive semesters beginning with the semester in which the student initially enrolls in a postsecondary institution.
- (11) Corporation: Tennessee Student Assistance Corporation.

- (12) **Cost of Attendance:** The expenses, both direct and indirect, incurred by a student and the student's family to finance the cost of receiving a postsecondary education as determined in accordance with the standards and practices used for Title IV programs by the institution at which the student is enrolled.
- (13) **Credit Hours Attempted:** The number of semester hours for which a degree-seeking or diploma/certificate-seeking student attending a postsecondary institution is enrolled as of the institutionally defined census date shall be considered credit hours attempted, regardless of whether a grade has been assigned. This standard shall apply to any change to a non-credit status, notwithstanding anything in Rule 1640-1-19-.19.
- (14) **Degree:** A two-year associate degree or four-year bachelor's degree conferred on students by a postsecondary educational institution upon completion of a unified program of study at the undergraduate level.
- (15) **Distance Learning:** An educational process that is characterized by the separation, in time or place, between instructor and student. It may include credit hours offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, or satellite transmission; audio or computer conferencing; video cassettes or discs, or correspondence.
- (16) **Dual Enrollment:** An arrangement between a high school and a postsecondary institution wherein a high school student enrolls in postsecondary classes and earns units of credit that count toward high school graduation requirements and hours of postsecondary credit.
- (17) **Eligible High School:**
 - (a) Tennessee public secondary school; or
 - (b) Any private secondary school that is located in Tennessee and is accredited by the Southern Association of Colleges and Schools.
- (18) **Eligible Postsecondary Institution:** An eligible independent postsecondary institution or an eligible public postsecondary institution.
- (19) **Eligible Independent Postsecondary Institution:**
 - (a) An institution created by testamentary trust for which the state acts by statute as trustee and for which the governor is authorized to appoint commissioners with the advice and consent of the senate and that offers courses leading to undergraduate degrees; or
 - (b) A Southern Association of Colleges and Schools accredited private postsecondary institution whose main campus is located in Tennessee.
- (20) **Eligible Public Postsecondary Institution:**
 - (a) An institution operated by the Board of Regents; or
 - (b) An institution in the University of Tennessee system.
- (21) **FAFSA:** Free Application for Federal Student Aid or the Renewal FAFSA as authorized by the U. S. Department of Education to indicate eligibility for federal and state financial aid programs.
- (22) **Full-Time Student:** A student attending a postsecondary educational institution and enrolled for at least twelve (12) semester hours during a semester of attendance.

- (23) General Assembly Merit Scholarship: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution awarded for academic excellence to supplement the Tennessee HOPE scholarship.
- (24) GED: A general educational development credential awarded by a state-approved institution or organization.
- (25) Grade Point Average: The numbered grade average calculated using a 4.0 scale, calculated to the hundredth decimal.
- (26) Home School Student: A student who completed high school in a Tennessee home school program meeting the requirements of §49-6-3050. For two (2) years immediately preceding completion of high school as a home school student, such student shall have been a student in a home school associated with a church-related school as defined by §49-50-801 and registered with the Tennessee local school district which the student would otherwise attend as required by §49-6-3050(a)(2)(C)(i) or an independent home school student whose parent or guardian has given notice to the local director of a Tennessee school district under § 49-6-3050(b)(1) of intent to conduct a home school.
- (27) Home Institution: The eligible postsecondary institution in which the student is enrolled and is in a matriculating status working toward a degree, diploma, or certificate.
- (28) Host Institution: The eligible postsecondary institution the student is temporarily attending as a transient student.
- (29) Immediate Family Member: Spouse, parents, children or siblings.
- (30) Incarcerated: Currently confined to a local, state, or federal correctional institution, as well as work release or educational release facilities.
- (31) Joint Enrollment: An arrangement between a high school and a postsecondary institution wherein a student enrolls in postsecondary classes while attending high school, but for which the student will receive credit from only one of the two institutions.
- (32) Matriculated Status: The student is a recognized candidate for an appropriate degree, diploma, or certificate at an eligible postsecondary educational institution.
- (33) Need Based Supplemental Award: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution who qualifies for a Tennessee HOPE scholarship and whose adjusted gross income attributable to the student does not exceed \$36,000.
- (34) Parent: A parent or guardian.
- (35) Part-time Student: A student attending a postsecondary educational institution and enrolled for at least six (6) semester hours, but less than twelve (12) semester hours, during a semester of attendance.
- (36) Regional Accrediting Association: Approved accrediting agencies are as follows:
 - (a) The Southern Association of Colleges and Schools;
 - (b) The New England Association of Schools and Colleges;

- (c) The Middle States Association of Colleges and Schools;
 - (d) The North Central Association of Colleges and Schools;
 - (e) The Northwestern Association of Schools and Colleges; and
 - (f) The Western Association of Schools and Colleges.
- (37) SAT: The Scholastic Aptitude Test administered by the College Board.
- (38) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution at which the student is enrolled.
- (39) Semester: Fall, spring, or summer semester at a postsecondary institution, if the institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system.
- (40) Semester Hour: The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. Semester hour includes each semester hour attempted, whether remedial, developmental or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED.
- (41) Study Abroad Program: Programs of study for which college credit is earned that include travel outside the United States.
- (42) TELS (Tennessee Education Lottery Scholarship) Award: Any scholarship and/or grant provided for by these rules that a student is eligible to receive.
- (43) Tennessee HOPE Access Grant: A grant to freshman students for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is one-half the amount of a Tennessee HOPE Scholarship and the need based supplemental award, which is funded from net proceeds of the state lottery.
- (44) Tennessee HOPE Scholarship: A scholarship for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is funded from net proceeds of the state lottery.
- (45) Test Date: Date designated by the ACT, Inc., or the College Board for administration of the ACT or SAT at national test centers designated by the respective testing entities. This shall also include the administration of either test on other dates as approved by the respective testing entities to accommodate an individual student's documented disability or other hardship.
- (46) Title IV: Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C.A. § 1070, et seq.
- (47) Transient Student: A visiting student enrolled in another institution who is granted temporary admission for the purpose of completing work to transfer back to the home institution and who expects to return to the institution in which he or she was previously enrolled.
- (48) Undergraduate Student: A student attending an eligible post-secondary institution and enrolled in a program leading to a diploma/certificate, an associate degree or a bachelor's degree.
- (49) Unweighted Grade Point Average: Grade point average on a 4.0 scale calculated without additional points awarded for advanced placement, honors, or other similar courses.

- (50) Wilder-Naifeh Technical Skills Grant: A grant for study in pursuit of a certificate or diploma at a Tennessee Technology Center operated by the Tennessee Board of Regents that is funded from net proceeds of the state lottery.

Authority: T.C.A. §§49-4-902 and 49-4-923

1640-1-19-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS

- (1) The Tennessee Education Lottery Scholarship program is intended to provide financial awards to offset costs associated with pursuing postsecondary education.
- (2) The initial award year will be the 2004-2005 academic year. Award levels for a full-time student in the 2004-2005 academic year are as follows:
- (a) Tennessee HOPE Scholarship:
1. \$1,500 per semester, maximum \$3,000 at four year institutions; and
 2. \$750 per semester, maximum \$1,500 at two year institutions.
- (b) Tennessee HOPE Scholarship Need Based Supplemental Award:
1. \$500 supplement to base award per semester, maximum \$1,000.
- (c) General Assembly Merit Scholarship:
1. \$500 supplement to base award per semester, maximum \$1,000.
- (a) Tennessee HOPE Access Grant (one half of Tennessee HOPE scholarship and need based supplemental award):
1. \$1,000 per semester, maximum \$2,000 at four year institutions; and
 2. \$625 per semester, maximum \$1,250 at two year institutions.
- (e) Wilder-Naifeh Technical Skills Grant:
1. \$1,250 maximum at Tennessee Technology Centers.
- (3) Award amounts for subsequent years shall be determined in accordance with §4-51-111 and shall be set in the general appropriations act.
- (4) Recipients of any TELS award as provided by these rules may enroll as a full-time or part-time student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.
- (5) Except for approved medical or personal leaves of absence as provided in Rule 1640-1-19-.17 or emergency military duty as provided in Rule 1640-1-19-.18, award recipients must be continuously enrolled in an eligible postsecondary institution.

- (6) In the event that net lottery proceeds are insufficient to fully fund the TELS award program, the Corporation shall determine the appropriate manner in which the various awards shall be reduced.
- (7) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student's TELS award as long as the student's total aid does not exceed the total cost of attendance. In the event that a student's total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, reduce the excess by reducing the student's TELS award.
- (8) The receipt of a Tennessee HOPE scholarship, Tennessee HOPE Access grant, Tennessee HOPE scholarship need based supplemental award and/or General Assembly Merit Scholarship is contingent upon admission to an eligible postsecondary institution. Academically qualifying for any of these awards program does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922 and 49-4-924.

1640-1-19-.03 APPLICATION PROCESS

- (1) The FAFSA shall be the application for all first year TELS awards and the FAFSA or Renewal FAFSA shall be the means by which eligible students reapply for TELS awards after their initial year of eligibility. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Regardless of the student's adjusted gross income, he or she is required to complete the FAFSA for each academic year in order to apply for and receive a TELS award.
- (2) Students whose FAFSA is filed with and processed by the U. S. Department of Education on or before May 1 will be given priority in determining awards for the subsequent academic year. Applications processed after May 1 will be considered in the order that they are processed to the extent that funds are available after making awards to students who met the priority deadline. It shall be the responsibility of the student to ensure that the FAFSA is timely submitted to ensure it is processed by the priority deadline.

Authority: T.C.A. §49-4-924.

1640-1-19-.04 GENERAL ELIGIBILITY

- (1) To be eligible for a TELS award a student shall:
 - (a) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, of regulations promulgated by the Board of Regents, for one year as of May 1 immediately preceding enrollment in an eligible postsecondary institution;
 - (b) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-1-19-.03;
 - (c) Be admitted to an eligible postsecondary institution;
 - (d) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;

- (e) Be in compliance with federal drug-free rules and laws for receiving financial assistance;
- (f) Meet each qualification relating to the relevant TELS award and applicable to the student;
- (g) Not be in default on a federal Title IV educational loan or Tennessee educational loan;
- (h) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
- (i) Not be incarcerated.

Authority: T.C.A. §§49-4-904, 49-4-905 and 49-4-924.

1640-1-19-.05 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP

- (1) In addition to the general eligibility requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship, a student shall be admitted to and enrolled in an eligible postsecondary institution the later of either the fall semester immediately following or within six (6) months of:
 - (a) Graduating from a Tennessee high school;
 - (b) Completing high school in a Tennessee home school program; or
 - (c) Obtaining a GED.
- (2) Students must also meet the applicable additional requirements outlined below:
 - (a) Students graduating from an eligible high school after January 1, 2004, shall be required to:
 - 1. Apply for a Tennessee HOPE scholarship prior to enrolling in an eligible postsecondary institution; and
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0 and achieve a final unweighted grade point average of at least 3.0 in the college core curriculum; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date.
 - (b) Students completing high school in a Tennessee home school program, obtaining a GED or graduating from a Tennessee high school that is not an eligible high school after January 1, 2004, shall be required to:
 - 1. Apply for a Tennessee HOPE scholarship prior to enrolling in an eligible postsecondary institution; and
 - (i) Attain a composite ACT score of at least 23 on any single ACT test date, or a combined SAT score of at least 1060 on any single SAT test date, if such student completed high school in a Tennessee home school program or graduated from a high school located in Tennessee that is not an eligible high school; or

- (ii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 19 on any single ACT test date, or a combined SAT score of at least 890 on any single SAT test date.
- (c) Students graduating from a Tennessee high school, completing high school in a Tennessee home school program, or obtaining a GED after January 1, 2003, but prior to January 1, 2004, are eligible to receive a Tennessee HOPE scholarship beginning the 2004-2005 academic year if the following criteria are met:
 - 1. A student graduating from an eligible high school shall:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0 and a final unweighted grade point average of at least 3.0 in the college core curriculum; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date.
 - 2. A student completing high school in a Tennessee home school program or graduating from a high school located in Tennessee that is not an eligible high school shall attain a composite ACT score of at least 23 on any single ACT test date or a combined SAT score of at least 1060 on any single SAT test date.
 - 3. A student obtaining a GED shall pass the GED tests with an average score of at least 525 and:
 - (i) Attain a composite ACT score of at least 19 on any single ACT test date; or
 - (ii) Attain a combined SAT score of at least 890 on any single SAT test date.
 - 4. All students meeting the requirements of subparagraph (2)(c)1, 2 or 3 of this rule, shall also meet each of the following criteria:
 - (i) Attend an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year without a Tennessee HOPE scholarship and complete at least twenty-four (24) semester hours of credit at such institution with a cumulative grade point average of 2.75;
 - (ii) Maintain satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the postsecondary institution in which the student enrolled;
 - (iii) Apply for a Tennessee HOPE scholarship while enrolled as a student at a postsecondary institution during the 2003-2004 academic year prior to the May 1, 2004 priority deadline; and
 - (iv) Be admitted to and enroll in an eligible postsecondary institution for the 2004-2005 academic year.
- (d) Students entering active duty in the United States Armed Services within two years after graduating from a Tennessee high school, completing high school in a Tennessee home school program or obtaining a GED, and otherwise meets the criteria outlined in this rule may apply for a TELS award if the student:

1. Applies within seven years of the student's date of entry into military service, or within one year of the student's honorable discharge from military service, whichever comes first; and
2. After graduation from high school, did not attend a postsecondary institution prior to entering military service.

Authority: T.C.A. §§49-4-905, 49-4-907, 49-4-908, 49-4-909, 49-4-910, 49-4-918 and 49-4-924.

1640-1-19-.06 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP NEED BASED SUPPLEMENTAL AWARD

Any student eligible for the Tennessee HOPE scholarship with an adjusted gross income attributable to the student that does not exceed \$36,000 will receive a need based supplemental award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the need based supplemental award. Notwithstanding the provisions of Rule 1640-1-19-.10 to the contrary, a student otherwise eligible for the Tennessee HOPE scholarship and meeting the requirements of this rule shall receive the need based supplemental award regardless of the student's eligibility for this grant in any prior year. A student eligible for both the need based supplemental award and the General Assembly Merit Scholarship shall be awarded the latter, but shall not simultaneously receive both awards.

Authority: T.C.A. §§49-4-915, 49-4-917 and 49-4-924.

1640-1-19-.07 ELIGIBILITY – GENERAL ASSEMBLY MERIT SCHOLARSHIP

- (1) Any student eligible for the Tennessee HOPE scholarship and enrolled in a program leading to an associate or baccalaureate degree will also receive a General Assembly Merit Scholarship if the following criteria are met:
 - (a) A student graduating from an eligible high school after January 1, 2004, shall:
 1. Achieve a final overall unweighted high school grade point average of at least 3.75;
 2. Achieve a final unweighted grade point average of at least 3.75 in the college core curriculum;
 3. Attain a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date; and
 4. Apply for a General Assembly Merit Scholarship in the senior year of high school.
 - (b) A student completing high school in a Tennessee home school program after January 1, 2004, or graduating from a high school located in Tennessee that is not an eligible high school after January 1, 2004, shall:
 1. Attain a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date;
 2. During the course of a home school program or while attending high school, enroll in at least four (4) courses totaling at least twelve (12) credit hours at an eligible postsecondary institu-

tion. Such courses shall meet or be equivalent to courses meeting the minimum degree requirements of the Board of Regents, other than the minimum degree requirements pertaining to physical education; and

3. Achieve a cumulative grade point average of at least 3.0 for all courses attempted at any eligible postsecondary institution during the course of a home school program or while attending high school.
- (c) A student graduating from an eligible high school after January 1, 2003, but prior to January 1, 2004, and seeking an associate or baccalaureate degree shall have:
1. Achieved a final overall unweighted high school grade point average of at least 3.75;
 2. Achieved a final unweighted high school grade point average of at least 3.75 in the college core curriculum;
 3. Attained a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date;
 4. Applied for the General Assembly Merit Scholarship in the year following graduation from high school and while attending, as a freshman, either an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year and attempt at least twenty-four (24) credit hours at such institution with a cumulative grade point average of 2.75;
 5. Maintained satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the eligible postsecondary institution in which the student enrolled; and
 6. Been admitted to and enrolled in an eligible postsecondary institution for the 2004-2005 academic year.
- (2) A student eligible for both the need based supplemental award and the General Assembly Merit Scholarship shall be awarded the latter, but shall not simultaneously be awarded both.

Authority: *T.C.A. §§49-4-916, 49-4-917 and 49-4-924.*

1640-1-10-.08 ELIGIBILITY – TENNESSEE HOPE ACCESS GRANT

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE access grant a student shall have graduated from an eligible high school after January 1, 2004, and:
 - (a) Have an adjusted gross income attributable to the student that does not exceed \$36,000;
 - (b) Apply for a Tennessee HOPE access grant and file a FAFSA in the senior year of high school;
 - (c) Graduate from an eligible high school after January 1, 2004, upon having completed curriculum requirements of the high school for graduation;
 - (d) Achieve a final overall unweighted high school grade point average of at least 2.75;

- (e) Achieve a final unweighted grade point average of at least 2.75 in the college core curriculum; and
- (f) Attain a composite ACT score of at least 18 on any single ACT test date or a combined SAT score of at least 860 on any single SAT test date.

Authority: §§49-4-920 and 49-4-924.

1640-1-19-.09 ELIGIBILITY – WILDER-NAIFEH TECHNICAL SKILLS GRANT

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Wilder-Naifeh technical skills grant a student seeking a diploma or certificate at a Tennessee Technology Center operated by the Board of Regents shall:
 - (a) Be admitted to the institution in a program of study leading to a certificate or diploma; and
 - (b) Have not, at any time, been the recipient of a Tennessee HOPE scholarship or completed a certificate or diploma with a Wilder-Naifeh Technical Skills Grant.
- (2) No minimum number of hours of enrollment is required for eligibility for a Wilder-Naifeh technical skills grant.
- (3) An eligible student may receive a Wilder-Naifeh technical skills grant for all course work required by the institution for a program of study leading to a certificate or diploma. Wilder-Naifeh technical skills grants may not be used for continuing education courses.

Authority: T.C.A. §§49-4-921 and 49-4-924.

1640-1-19-.10 RETENTION OF AWARDS – GENERAL REQUIREMENTS

- (1) To retain a TELS award authorized by this chapter, a student at an eligible postsecondary institution shall continue to meet all applicable requirements for the scholarship and shall reapply by completing the FAFSA or Renewal FAFSA for the applicable award for each academic year.
- (2) Eligibility shall also be reviewed at the end of the semester in which the student has attempted a total of 24, 48, 72, or 96 semester hours. At the end of the semester in which the student has attempted a total of 24 semester hours, the student shall have achieved a cumulative grade point average of at least 2.75 to continue to receive the TELS award. At the end of the semester in which the student has attempted a total of 48, 72, or 96 semester hours, the student shall achieve a cumulative grade point average of at least 3.0 to continue to receive the TELS award.
- (3) Except as provided in paragraph (4) of this rule and Rules 1640-1-19-.17 and 1640-1-19-.18-which outline appropriate justification for medical and personal leaves of absence, a student may receive a Tennessee HOPE scholarship until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of 120 credit hours;

- (c) Five years have passed from the date of the student's initial enrollment at any postsecondary institution.
- (4) The attempted credit hour limitation includes remedial and developmental studies and all regular college credit courses attempted after high school graduation. If a student enters the semester with less than 120 semester hours attempted and will surpass the 120 semester hours limit, he or she is eligible for payment for the full number of hours enrolled for that semester. If the student is enrolled in a specific undergraduate degree program that is designed to be more than 120 semester hours in length, the student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less. The student is eligible for payment for the full number of hours enrolled in the final semester. Regardless of the number of hours attempted, once the student has earned a bachelor's degree, he or she is ineligible for additional TELS awards.
- (5) A student who meets all other requirements for fourth or fifth year eligibility except that he or she is classified at the professional level rather than as an undergraduate, and has not been awarded a baccalaureate degree, is eligible if he or she was accepted into the professional level program of study that is an extension of the student's bachelor's degree program. Such student is eligible for a total of 136 semester credit hours, or the number of hours required for the degree, whichever is less.
- (6) If a student ceases to be eligible for any TELS award, except the need based supplemental award, at any time for any reason, then the student shall not be eligible to regain the TELS award or become eligible for another TELS award.
- (7) Except as provided by Rule 1640-1-19-.17 or 1640-1-19-.18, a student receiving a TELS award provided by this chapter shall maintain continuous enrollment at an eligible postsecondary institution and maintain satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is enrolled.

Authority: T.C.A. §§49-4-909, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921 and 49-9-924.

1640-1-19-.11 RETENTION OF AWARDS – TENNESSEE HOPE ACCESS GRANT

- (1) In addition to the general requirements for retention of award in Rule 1640-1-19-.10:
 - (a) A Tennessee HOPE access grant shall be awarded to an eligible student only until the end of the semester in which the student has attempted a total of 24 credit hours. A student who is eligible for a Tennessee HOPE scholarship shall be ineligible for a Tennessee HOPE access grant.
 - (b) If a student receiving a Tennessee HOPE access grant has achieved a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted 24 semester hours, the student shall be eligible for a Tennessee HOPE scholarship. The student will also receive the need based supplemental award referenced in Rule 1640-1-19-.06, if the adjusted gross income attributable to the student at the time of review does not exceed \$36,000.
 - (c) A student may receive a Tennessee HOPE scholarship after having received a Tennessee HOPE access grant until the first of the following events:
 - 1. The student has earned a baccalaureate degree;
 - 2. The student has attempted at any postsecondary institution a total of 120 semester hours, or if the student is enrolled in an undergraduate degree program required to be more than 120

semester hours in length, that student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less; or

3. Five years from the date of the student's initial enrollment at any postsecondary institution have passed.

Authority: T.C.A. §§49-4-920 and 49-4-924.

1640-1-19-.12 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD PROCESS

- (1) On or before March 1 of each year all eligible high schools shall submit to the Corporation the name, social security number, unweighted overall grade point average, and unweighted college core grade point average for academically eligible seniors who received a composite ACT score less than 19 on any ACT single test date or a combined SAT score less than 890 on any single SAT test date, cumulative through the seventh semester.
- (2) On or before March 1 of each year all Tennessee high schools that are not eligible high schools shall submit to the Corporation the name, social security number, unweighted overall grade point average, and unweighted college core grade point average for academically eligible seniors who received a composite ACT score less than 23 on any ACT single test date or a combined SAT score less than 1060 on any single SAT test date, cumulative through the seventh semester.
- (3) On or before July 1 of each year, all Tennessee high schools shall revise and submit to the Corporation the information required of each in paragraphs 1 or 2 of this rule, cumulative through the eighth semester.
- (4) On or before September 1 of each year, all Tennessee high schools shall, to the extent it has not already done so, submit to the Corporation the following information for all students who graduated during the previous academic year:
 - (a) name;
 - (b) social security number;
 - (c) high school code;
 - (d) final unweighted overall grade point average;
 - (e) final unweighted college core grade point average;
 - (f) number of college core courses taken;
 - (g) number of Advanced Placement courses taken;
 - (h) ACT composite, verbal and math scores; and
 - (i) SAT composite, verbal and math scores.
- (5) On or before March 1, 2004, utilizing information provided on the student's high school transcript, all eligible postsecondary institutions shall submit to the Corporation the name, social security number, the number of college core courses taken in high school and the final unweighted college core and unweighted

overall grade point averages from high school on students who after January 1, 2003, but before January 1, 2004:

- (a) enrolled in the respective institutions in the fall 2003 and/or spring 2004 semesters; and
- (b) graduated from an eligible high school and received a composite ACT score less than 19 on any ACT single test date or a combined SAT score less than 890 on any single SAT test date; or
- (c) completed high school in a Tennessee home school program, obtained a GED or graduated from a high school located in Tennessee and received a composite ACT score less than 23 on any single ACT test date or a combined SAT score less than 1060 on any single SAT test date.

Authority: T.C.A. §§49-4-903 and 49-4-924.

1640-1-19-.13 CONTINUATION OF TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD

- (1) All students receiving a TELS award shall reapply for the award by the May 1 priority deadline each subsequent year. Students whose FAFSA or Renewal FAFSA is filed with and processed by the U. S. Department of Education on or before May 1 will be given priority in determining awards for the subsequent academic year. Application is made by filing a FAFSA or Renewal FAFSA as provided in Rule 1640-1-19-.03.
- (2) On or before July 1 of each year, all eligible postsecondary institutions shall submit to the Corporation the number of credit hours attempted and the cumulative grade point average of all students receiving a TELS award during the previous academic year.
- (3) On or before March 31, 2004, all eligible postsecondary institutions shall also submit to the Corporation the following information relative to each student enrolled in the institution who graduated from a Tennessee high school, completed high school in a Tennessee home school program or obtained a GED after January 1, 2003, but before January 1, 2004, and who as an entering freshman met the applicable qualifications of Rule 1640-1-19-.05(1) and (2)(c):
 - (a) the number of credit hours attempted in the fall 2003 and spring 2004 semesters; and
 - (b) the cumulative grade point average for the fall 2003 semester.
- (4) On or before July 1, 2004, each eligible postsecondary education institution shall update this information to include each student's cumulative grade point average through the spring 2004 semester.
- (5) Students whose eligibility could be affected by courses taken during the summer semester shall not be deemed to be eligible or ineligible based on the July 1 reports to the Corporation.

Authority: T.C.A. §§49-4-903, 49-4-911 and 49-4-924.

1640-1-19-.14 AWARD MADE IN ERROR

If a student receives a TELS award and it is later determined that all or a portion of the award was made in error, the student shall be required to reimburse the eligible postsecondary institution for the amount of the award made in error. The eligible postsecondary institution shall provide the student with a notice indicat-

ing the amount to be refunded. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student will be ineligible for student aid from the Corporation until the refund is paid.

Authority: T.C.A. §49-4-924.

1640-1-19-.15 REFUND POLICY

If a student fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from the Corporation until the refund is paid.

Authority: T.C.A. §49-4-924

1640-1-19-.16 CONVERTING FROM FULL-TIME TO PART-TIME ENROLLMENT

- (1) Students enrolled in a full-time status, as of institutionally defined census date, may not convert to part-time status within the same semester and receive a scholarship award for that semester unless the student requests and the institution approves the change to part-time status.
- (2) An institution may allow a change from full-time to part-time status within the same semester only when there are documented medical or personal grounds. Such medical or personal grounds shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, or other extraordinary circumstances beyond the student's control where continued full-time attendance by the student creates a substantial hardship.
- (3) Each eligible postsecondary institution shall adopt procedures for considering student requests for change from full-time to part-time status within the semester. In the event an institution denies a student's request to change from full-time status to part-time status within a semester, the student may appeal the decision pursuant to Rule 1640-1-19-.23.
- (4) In the event that the decision to deny the change of status is upheld through the appeals process, the student shall be ineligible to regain the TELS award or become eligible for another TELS award.
- (5) In the event the change to part-time status is approved, the amount of the scholarship award shall be reduced in accordance with the provisions of Rule 1640-1-19-.02(4) regarding part-time awards.

Authority: T.C.A. §§49-4-911, 49-4-912 and 49-4-924.

1640-1-19-.17 PERSONAL OR MEDICAL LEAVE OF ABSENCE

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving an award(s) upon resumption of the student's attendance at an eligible

postsecondary institution so long as all other applicable eligibility criteria are met. Each eligible postsecondary institution shall adopt procedures for considering student requests for leaves of absence. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. In addition to the reasons outlined in Rule 1640-1-.18, allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. Acceptable reasons shall also include a student's participation in an internship or co-op program that is required or encouraged as part the academic program in which he/she is enrolled. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with Rule 1640-1-18-.23.

- (2) A student granted a medical or personal leave of absence who resumes their education at an eligible postsecondary institution shall retain TELS award eligibility until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of 120 semester hours, or if the student is enrolled in an undergraduate degree program required to be more than 120 semester hours in length, that student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less; or
 - (c) The sum of the number of calendar years the student attended a postsecondary institution prior to the leave of absence and the number of calendar years of attendance after the leave of absence equals five calendar years.

Authority: T.C.A. §§49-4-903, 49-4-919 and 49-4-924.

1640-1-19-.18 MILITARY MOBILIZATION OF ELIGIBLE STUDENTS

- (1) Members of the United States Armed Services, National Guard, or Armed Forces Reserves receiving a TELS award who are mobilized for active duty during a semester that is already in progress shall be granted a personal leave of absence by the eligible postsecondary institution the student is attending and shall not have their TELS award eligibility negatively impacted.
- (2) If, as a result of being mobilized, a student elects to completely withdraw from an eligible postsecondary institution, then the hours attempted during the semester will not be taken into consideration for purposes of determining future TELS award eligibility.
- (3) If due to a military mobilization the student elects to receive an "incomplete" in any or all courses, the provisions of Rule 1640-1-19-.19(13) shall apply.
- (4) Upon re-enrollment within one year following mobilization, the student's TELS award eligibility will resume as if no break in enrollment had occurred and shall retain TELS award eligibility until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of 120 semester hours, or if the student is enrolled in an undergraduate degree program required to be more than 120 semes-

ter hours in length, that student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less; or

- (c) The sum of the number of calendar years the student attended a postsecondary institution prior to the leave of absence and the number of calendar years of attendance after the leave of absence equals five calendar years.
- (5) An eligible postsecondary institution shall be authorized to consider a request for a leave of absence from a student whose spouse, child, father or mother is mobilized for active duty as a valid basis for a personal leave of absence. This request shall be made in accordance with the provisions of this rule. If the request is granted the student shall receive the same accommodations described above.

Authority: T.C.A. §§49-4-903, 49-4-919 and 49-4-924.

1640-1-19-.19 CALCULATION OF POSTSECONDARY CUMULATIVE GRADE POINT AVERAGE

- (1) The postsecondary cumulative grade point average used to determine eligibility for a renewal of a TELS award, must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all credit hours attempted after high school graduation, except as otherwise provided in this rule.
- (2) All credit hours attempted at all postsecondary institutions the student has attended and their corresponding grades must be included in the calculation of the postsecondary cumulative grade point average, regardless of whether the receiving institution will apply the credit hours toward the student's degree requirements. Credit hours that were repeated shall be included in the postsecondary cumulative grade point average calculation and are counted towards the limitation on credit hours.
- (3) Credit hours attempted prior to high school graduation, completion of a home school program in Tennessee or achieve a GED do not count toward the limitation on credit hours provided in Rule 1640-1-19-.11(3), nor are the grades for those classes included in the postsecondary cumulative grade point average.
- (4) Credit hours earned by examination are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3).
- (5) Credit hours attempted as part of a diploma or certificate program of study are not considered to be college credit hours and therefore shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3), unless those hours are accepted toward a degree.
- (6) Remedial and developmental studies and independent studies courses are eligible for payment with TELS awards and shall be included in the calculation of the postsecondary cumulative grade point average and shall be counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3).
- (7) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a TELS award nor will the credit hours be included in the calculation of the postsecondary cumulative grade point average or in the credit hour limitation provided in Rule 1640-1-19-.10(3).
- (8) Continuing education courses are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3).

- (9) Students who obtain a grade change shall notify the financial aid office within 30 calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a TELS award, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the TELS award may be adjusted in the current award year. The eligible postsecondary institution shall make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. If the student's application for reinstatement is denied, he/she may appeal the decision in accordance with Rule 1640-1-19-.23.
- (10) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for TELS award payment for distance learning courses if all other eligibility requirements are met. Students may take courses through more than one eligible postsecondary institution during the same semester. Payment for the distance learning courses shall be made in the same manner as transient students as provided in Rule 1640-1-19-.21.
- (11) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an internship or co-op program if the student receives college credit from the internship or co-op experience and must pay tuition and fees. The credit hours shall be included in the postsecondary cumulative grade point average and count toward the limitation on credit hours as provided in Rule 1640-1-19-.10(3).
- (12) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an alternative study or study abroad program if all other eligibility requirements are met. The eligible postsecondary institution which is the student's home institution must approve the alternative study or study abroad program for credit toward the student's degree and the number of hours that will be applied toward the degree prior to the student's departure.
- (13) Courses that appear on a student's transcript as an "incomplete" shall be considered credit hours attempted. The student's TELS award eligibility, however, shall be determined by excluding the credit hours attributable to the course for which an "incomplete" has been assigned from the cumulative grade point average calculation.
 - (a) If the student fails to retain eligibility for a TELS award as a result of the calculation, but later becomes eligible when the grade for the "incomplete" course is reported, the student is eligible to receive a TELS award retroactively within the award year and shall retain eligibility. Retroactive TELS awards for previous award years shall be added to the current award year. The eligible postsecondary institution shall, however, make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. It shall be the responsibility of the student to notify the financial aid office at the eligible postsecondary institution that a grade has been awarded and request that the TELS award be reinstated. Each eligible postsecondary institution shall develop a standard form for use by students to comply with this provision. If the student's application for reinstatement is denied, he/she may appeal the decision in accordance with Rule 1640-1-19-.23.
 - (b) If the student retains eligibility for a TELS award as a result of the calculation, but later becomes ineligible when the grade for the "incomplete" course is reported, then the student shall be ineligible for all TELS awards. Additionally, the student shall reimburse the institution for TELS awards received in the interim.

- (14) If the student is otherwise eligible to receive a TELS award, but does not receive TELS funding, or TELS funding is reduced because his or her cost of attendance is covered by other aid, all credit hours attempted that semester shall still apply to the credit hour limitation provided in Rule 1640-1-19-.10(3).

Authority: T.C.A. §§49-4-903 and 49-4-924.

1640-1-19-.20 TRANSFER STUDENTS

A TELS recipient transferring from an eligible postsecondary institution to another is eligible for a TELS award if all eligibility requirements continue to be met.

Authority: T.C.A. §§49-4-910 and 49-4-924.

1640-1-19-.21 TRANSIENT STUDENTS

A transient student is eligible to receive a TELS award if all other eligibility requirements are met and if both the home and host institutions are eligible postsecondary institutions. The home institution shall award the TELS funds to the transient student based on certification of eligibility from the host institution. The home institution shall certify to the Corporation that the student is eligible for a TELS award. Each eligible postsecondary institution shall develop a process to effectuate each provision of this rule and shall notify its students of the process and the availability of the necessary forms to comply with the requirements. At the end of the semester the host institution shall provide the student's home institution with all information necessary for the home institution to determine continued TELS award eligibility.

Authority: T.C.A. §§49-4-903 and 49-4-924.

1640-1-19-.22 DENIAL OF INITIAL ELIGIBILITY – FAILURE TO TIMELY ENROLL

A student who fails to timely enroll in an eligible postsecondary institution as required by Rule 1640-1-19-.05(1) may be granted an exception if the student failed to meet the requirement for any reason provided for in this rule. An exception shall be granted only for medical or personal reasons. Acceptable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where timely enrollment by the student would create a substantial hardship. In the event a student's request for an exemption for failing to timely enroll is denied, the student may appeal the decision pursuant to Rule 1640-1-19-.23.

Authority: T.C.A. §§49-4-903 and 49-4-924.

1640-1-19-.23 APPEAL AND EXCEPTION PROCESS

- (1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of hearing appeals from decisions denying or revoking applicants' TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines

for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a hearing and shall make such determination no later than 14 calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a hearing is required the IRP shall hear the appeal no later than 14 calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The IRP shall provide a copy of the written decision to the appellant as soon as practicable. For the purposes of this rule, it will be presumed that the decision was delivered to the appellant two calendar days after the decision was placed in the U.S. Postal Service addressed to the appellant's official mailing address according to the eligible postsecondary institution's records.

- (2) A three person TELS Award Appeals Panel shall be appointed by the Corporation's Executive Director for purpose of hearing appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal, with the Corporation within 14 calendar days from the date that the decision was delivered to the student. The record of the IRP hearing shall be provided to the Corporation by the eligible postsecondary institution that held the appeal. The Appeals Panel may award or reinstate the student's TELS award without a hearing. This decision shall be made no later than 14 calendar days after an appeal is properly filed and the record from the IRP hearing is received. If the Appeals Panel determines that a hearing is required, it shall provide the appellant with at least 14 calendar days notice of the hearing date, such notice shall include the time and location of the hearing. The Appeals Panel shall hear the appeal no later than 45 calendar days after the appeal is properly filed, unless an extension is requested by the appellant and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than 14 calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant as soon as practicable. The Appeals Panel is the final administrative appeal.
- (3) The authority of the IRPs and the TELS Award Appeals Panel shall be strictly limited to consideration of appeals arising from eligibility determinations made by an eligible postsecondary institution or the Corporation. Neither appeals panel shall have the authority to rule on the validity of any information provided to the eligible postsecondary institution or Corporation by another entity on which its decision to deny or revoke a TELS award was based, including, but not limited to high school grade point average, ACT or SAT scores, or grades from another eligible postsecondary institution. Additionally, neither appeals panel shall have the authority to consider requests for exceptions to the high school grade point average or curriculum track requirements.

Authority: *T.C.A. §49-4-924.*

The proposed rules set out herein were properly filed in the Department of State on the 29th day of December, 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 April, 2004. (12-22)

PUBLIC NECESSITY RULES

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

- 1200 - Department of Health - Bureau of Health services - Public necessity rules relating to Conrad J-1 Visa Waiver physicians, chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program, 9 T.A.R. (September 2003) - Filed August 13, 2003; effective through January 25, 2004. (08-10)

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to Title 49, Chapter 4, Part 9 of the Tennessee Code Annotated, which was enacted by the 103rd General Assembly, the Tennessee Education Lottery Scholarship Program was created. The statute provides for scholarships to be awarded from the proceeds of lottery sales beginning with the Fall semester 2004. The law further provides, at T.C.A. §49-4-924, for the Tennessee Student Assistance Corporation to promulgate rules and regulations to effectuate the implementation of the lottery scholarship program. The statute further authorizes the promulgation of public necessity rules. It is necessary to promulgate public necessity rules to ensure the timely and orderly implementation of the lottery scholarship program for the Fall 2004 semester.

For a copy of these public necessity rules contact Lora Daniels, Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, telephone 615-741-1346.

Michael Roberts, Executive Director
Tennessee Student Assistance Corporation

**PUBLIC NECESSITY RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION**

**CHAPTER 1640-1-19
TENNESSEE EDUCATIONAL LOTTERY SCHOLARSHIP PROGRAM**

NEW RULES

TABLE OF CONTENTS

1640-1-19-.01	Definitions	1640-1-19-.13	Continuation of Tennessee Education Lottery Scholarship Award
1640-1-19-.02	Scholarship Award Amounts and Classifications	1640-1-19-.14	Award Made in Error
1640-1-19-.03	Application Process	1640-1-19-.15	Refund Policy
1640-1-19-.04	General Eligibility	1640-1-19-.16	Converting from Full-time to Part-time Enrollment
1640-1-19-.05	Eligibility – Tennessee Hope Scholarship	1640-1-19-.17	Personal or Medical Leave of Absence
1640-1-19-.06	Eligibility – Tennessee Hope Scholarship Need Based Supplemental Award	1640-1-19-.18	Military Mobilization of Eligible Students
1640-1-19-.07	Eligibility – General Assembly Merit Scholarship	1640-1-19-.19	Calculation of Postsecondary Cumulative Grade Point Average
1640-1-19-.08	Eligibility – Tennessee Hope Access Grant	1640-1-19-.20	Transfer Students
1640-1-19-.09	Eligibility – Wilder-Naifeh Technical Skills Grant	1640-1-19-.21	Transient Students
1640-1-19-.10	Retention of Awards – General Requirements	1640-1-19-.22	Denial of Initial Eligibility – Failure to Timely Enroll
1640-1-19-.11	Retention of Awards – Tennessee Hope Access Grant	1640-1-19-.23	Appeal and Exception Process
1640-1-19-.12	Tennessee Education Lottery Scholarship Award Process		

1640-1-19-.01 DEFINITIONS

- (1) Academic Year: Three consecutive semesters that begins with the fall semester and ends with the summer semester.
- (2) ACT: The ACT Assessment administered by ACT, Inc.
- (3) Adjusted Gross Income Attributable to the Student or Student’s Adjusted Gross Income:
 - (a) The adjusted gross income of the student’s parent or parents as reported on the student’s Free Application for Federal Student Aid (FAFSA) and used by the Corporation in determinations of eligibility for federal or state financial aid, if the student is a dependent of a parent or parents as defined by FAFSA; or
 - (b) The adjusted gross income of the student and, if applicable, the student’s spouse as reported on the student’s FAFSA and used by the Corporation in determinations of eligibility for federal or state financial aid, if the student is independent of parents as defined by FAFSA.
- (4) Alternative Study Program: Program of study including, but not limited to student exchange programs, practicum, co-op programs and internships, that includes travel outside the State of Tennessee that is sponsored or offered by:
 - (a) an eligible postsecondary institution; or

- (b) an eligible postsecondary institution in conjunction with either another eligible postsecondary institution or a postsecondary institution that is accredited by a regional accrediting association.
- (5) Award Year: Three consecutive semesters that begins with the fall semester and ends with the summer semester.
 - (6) Board of Regents: The Board of Regents of the State University and Community College System of Tennessee.
 - (7) Certificate or Diploma: A credential, other than a degree, the receipt of which indicates satisfactory completion of training in a program of study offered by a Tennessee Technology Center operated by the Board of Regents.
 - (8) Continuing Education: Courses and programs that do not lead to a certificate, diploma or degree that are designed for personal development and are an extension of the traditional on-campus learning process.
 - (9) College Core Curriculum: The high school courses in the “Core Curriculum” and “University Preparation Curriculum” approved by the Tennessee State Board of Education in Rule 0520-1-3-.06(1)(b), excluding non-core course electives.
 - (10) Continuous Enrollment: A student is enrolled for at least two of each three consecutive semesters beginning with the semester in which the student initially enrolls in a postsecondary institution.
 - (11) Corporation: Tennessee Student Assistance Corporation.
 - (12) Cost of Attendance: The expenses, both direct and indirect, incurred by a student and the student’s family to finance the cost of receiving a postsecondary education as determined in accordance with the standards and practices used for Title IV programs by the institution at which the student is enrolled.
 - (13) Credit Hours Attempted: The number of semester hours for which a degree-seeking or diploma/certificate-seeking student attending a postsecondary institution is enrolled as of the institutionally defined census date shall be considered credit hours attempted, regardless of whether a grade has been assigned. This standard shall apply to any change to a non-credit status, notwithstanding anything in Rule 1640-1-19-.19.
 - (14) Degree: A two-year associate degree or four-year bachelor’s degree conferred on students by a postsecondary educational institution upon completion of a unified program of study at the undergraduate level.
 - (15) Distance Learning: An educational process that is characterized by the separation, in time or place, between instructor and student. It may include credit hours offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, or satellite transmission; audio or computer conferencing; video cassettes or discs, or correspondence.
 - (16) Dual Enrollment: An arrangement between a high school and a postsecondary institution wherein a high school student enrolls in postsecondary classes and earns units of credit that count toward high school graduation requirements and hours of postsecondary credit.
 - (17) Eligible High School:
 - (a) Tennessee public secondary school; or

- (b) Any private secondary school that is located in Tennessee and is accredited by the Southern Association of Colleges and Schools.
- (18) Eligible Postsecondary Institution: An eligible independent postsecondary institution or an eligible public postsecondary institution.
- (19) Eligible Independent Postsecondary Institution:
- (a) An institution created by testamentary trust for which the state acts by statute as trustee and for which the governor is authorized to appoint commissioners with the advice and consent of the senate and that offers courses leading to undergraduate degrees; or
 - (b) A Southern Association of Colleges and Schools accredited private postsecondary institution whose main campus is located in Tennessee.
- (20) Eligible Public Postsecondary Institution:
- (a) An institution operated by the Board of Regents; or
 - (b) An institution in the University of Tennessee system.
- (21) FAFSA: Free Application for Federal Student Aid or the Renewal FAFSA as authorized by the U. S. Department of Education to indicate eligibility for federal and state financial aid programs.
- (22) Full-Time Student: A student attending a postsecondary educational institution and enrolled for at least twelve (12) semester hours during a semester of attendance.
- (23) General Assembly Merit Scholarship: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution awarded for academic excellence to supplement the Tennessee HOPE scholarship.
- (24) GED: A general educational development credential awarded by a state-approved institution or organization.
- (25) Grade Point Average: The numbered grade average calculated using a 4.0 scale, calculated to the hundredth decimal.
- (26) Home School Student: A student who completed high school in a Tennessee home school program meeting the requirements of §49-6-3050. For two (2) years immediately preceding completion of high school as a home school student, such student shall have been a student in a home school associated with a church-related school as defined by §49-50-801 and registered with the Tennessee local school district which the student would otherwise attend as required by §49-6-3050(a)(2)(C)(i) or an independent home school student whose parent or guardian has given notice to the local director of a Tennessee school district under § 49-6-3050(b)(1) of intent to conduct a home school.
- (27) Home Institution: The eligible postsecondary institution in which the student is enrolled and is in a matriculating status working toward a degree, diploma, or certificate.
- (28) Host Institution: The eligible postsecondary institution the student is temporarily attending as a transient student.

- (29) Immediate Family Member: Spouse, parents, children or siblings.
- (30) Incarcerated: Currently confined to a local, state, or federal correctional institution, as well as work release or educational release facilities.
- (31) Joint Enrollment: An arrangement between a high school and a postsecondary institution wherein a student enrolls in postsecondary classes while attending high school, but for which the student will receive credit from only one of the two institutions.
- (32) Matriculated Status: The student is a recognized candidate for an appropriate degree, diploma, or certificate at an eligible postsecondary educational institution.
- (33) Need Based Supplemental Award: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution who qualifies for a Tennessee HOPE scholarship and whose adjusted gross income attributable to the student does not exceed \$36,000.
- (34) Parent: A parent or guardian.
- (35) Part-time Student: A student attending a postsecondary educational institution and enrolled for at least six (6) semester hours, but less than twelve (12) semester hours, during a semester of attendance.
- (36) Regional Accrediting Association: Approved accrediting agencies are as follows:
 - (a) The Southern Association of Colleges and Schools;
 - (b) The New England Association of Schools and Colleges;
 - (c) The Middle States Association of Colleges and Schools;
 - (d) The North Central Association of Colleges and Schools;
 - (e) The Northwestern Association of Schools and Colleges; and
 - (f) The Western Association of Schools and Colleges.
- (37) SAT: The Scholastic Aptitude Test administered by the College Board.
- (38) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution at which the student is enrolled.
- (39) Semester: Fall, spring, or summer semester at a postsecondary institution, if the institution is on a semester system, or the equivalent, if the institution is on a system other than a semester system.
- (40) Semester Hour: The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. Semester hour includes each semester hour attempted, whether remedial, developmental or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED.
- (41) Study Abroad Program: Programs of study for which college credit is earned that include travel outside the United States.

- (42) TELS (Tennessee Education Lottery Scholarship) Award: Any scholarship and/or grant provided for by these rules that a student is eligible to receive.
- (43) Tennessee HOPE Access Grant: A grant to freshman students for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is one-half the amount of a Tennessee HOPE Scholarship and the need based supplemental award, which is funded from net proceeds of the state lottery.
- (44) Tennessee HOPE Scholarship: A scholarship for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution that is funded from net proceeds of the state lottery.
- (45) Test Date: Date designated by the ACT, Inc., or the College Board for administration of the ACT or SAT at national test centers designated by the respective testing entities. This shall also include the administration of either test on other dates as approved by the respective testing entities to accommodate an individual student's documented disability or other hardship.
- (46) Title IV: Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C.A. § 1070, et seq.
- (47) Transient Student: A visiting student enrolled in another institution who is granted temporary admission for the purpose of completing work to transfer back to the home institution and who expects to return to the institution in which he or she was previously enrolled.
- (48) Undergraduate Student: A student attending an eligible post-secondary institution and enrolled in a program leading to a diploma/certificate, an associate degree or a bachelor's degree.
- (49) Unweighted Grade Point Average: Grade point average on a 4.0 scale calculated without additional points awarded for advanced placement, honors, or other similar courses.
- (50) Wilder-Naifeh Technical Skills Grant: A grant for study in pursuit of a certificate or diploma at a Tennessee Technology Center operated by the Tennessee Board of Regents that is funded from net proceeds of the state lottery.

Authority: T.C.A. §§49-4-902 and 49-4-923

1640-1-19-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS

- (1) The Tennessee Education Lottery Scholarship program is intended to provide financial awards to offset costs associated with pursuing postsecondary education.
- (2) The initial award year will be the 2004-2005 academic year. Award levels for a full-time student in the 2004-2005 academic year are as follows:
 - (a) Tennessee HOPE Scholarship:
 - 1. \$1,500 per semester, maximum \$3,000 at four year institutions; and
 - 2. \$750 per semester, maximum \$1,500 at two year institutions.
 - (b) Tennessee HOPE Scholarship Need Based Supplemental Award:

1. \$500 supplement to base award per semester, maximum \$1,000.
- (c) General Assembly Merit Scholarship:
1. \$500 supplement to base award per semester, maximum \$1,000.
- (a) Tennessee HOPE Access Grant (one half of Tennessee HOPE scholarship and need based supplemental award):
1. \$1,000 per semester, maximum \$2,000 at four year institutions; and
 2. \$625 per semester, maximum \$1,250 at two year institutions.
- (e) Wilder-Naifeh Technical Skills Grant:
1. \$1,250 maximum at Tennessee Technology Centers.
- (3) Award amounts for subsequent years shall be determined in accordance with §4-51-111 and shall be set in the general appropriations act.
- (4) Recipients of any TELS award as provided by these rules may enroll as a full-time or part-time student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.
- (5) Except for approved medical or personal leaves of absence as provided in Rule 1640-1-19-.17 or emergency military duty as provided in Rule 1640-1-19-.18, award recipients must be continuously enrolled in an eligible postsecondary institution.
- (6) In the event that net lottery proceeds are insufficient to fully fund the TELS award program, the Corporation shall determine the appropriate manner in which the various awards shall be reduced.
- (7) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student's TELS award as long as the student's total aid does not exceed the total cost of attendance. In the event that a student's total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, reduce the excess by reducing the student's TELS award.
- (8) The receipt of a Tennessee HOPE scholarship, Tennessee HOPE Access grant, Tennessee HOPE scholarship need based supplemental award and/or General Assembly Merit Scholarship is contingent upon admission to an eligible postsecondary institution. Academically qualifying for any of these awards program does not guarantee admission to an eligible postsecondary institution.

Authority: T.C.A. §§49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922 and 49-4-924.

1640-1-19-.03 APPLICATION PROCESS

- (1) The FAFSA shall be the application for all first year TELS awards and the FAFSA or Renewal FAFSA shall be the means by which eligible students reapply for TELS awards after their initial year of eligibility.

The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Regardless of the student's adjusted gross income, he or she is required to complete the FAFSA for each academic year in order to apply for and receive a TELS award.

- (2) Students whose FAFSA is filed with and processed by the U. S. Department of Education on or before May 1 will be given priority in determining awards for the subsequent academic year. Applications processed after May 1 will be considered in the order that they are processed to the extent that funds are available after making awards to students who met the priority deadline. It shall be the responsibility of the student to ensure that the FAFSA is timely submitted to ensure it is processed by the priority deadline.

Authority: T.C.A. §49-4-924.

1640-1-19-.04 GENERAL ELIGIBILITY

- (1) To be eligible for a TELS award a student shall:
- (a) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, of regulations promulgated by the Board of Regents, for one year as of May 1 immediately preceding enrollment in an eligible postsecondary institution;
 - (b) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-1-19-.03;
 - (c) Be admitted to an eligible postsecondary institution;
 - (d) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;
 - (e) Be in compliance with federal drug-free rules and laws for receiving financial assistance;
 - (f) Meet each qualification relating to the relevant TELS award and applicable to the student;
 - (g) Not be in default on a federal Title IV educational loan or Tennessee educational loan;
 - (h) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
 - (i) Not be incarcerated.

Authority: T.C.A. §§49-4-904, 49-4-905 and 49-4-924.

1640-1-19-.05 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP

- (1) In addition to the general eligibility requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship, a student shall be admitted to and enrolled in an eligible postsecondary institution the later of either the fall semester immediately following or within six (6) months of:
- (a) Graduating from a Tennessee high school;
 - (b) Completing high school in a Tennessee home school program; or

- (c) Obtaining a GED.
- (2) Students must also meet the applicable additional requirements outlined below:
- (a) Students graduating from an eligible high school after January 1, 2004, shall be required to:
 - 1. Apply for a Tennessee HOPE scholarship prior to enrolling in an eligible postsecondary institution; and
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0 and achieve a final unweighted grade point average of at least 3.0 in the college core curriculum; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date.
 - (b) Students completing high school in a Tennessee home school program, obtaining a GED or graduating from a Tennessee high school that is not an eligible high school after January 1, 2004, shall be required to:
 - 1. Apply for a Tennessee HOPE scholarship prior to enrolling in an eligible postsecondary institution; and
 - (i) Attain a composite ACT score of at least 23 on any single ACT test date, or a combined SAT score of at least 1060 on any single SAT test date, if such student completed high school in a Tennessee home school program or graduated from a high school located in Tennessee that is not an eligible high school; or
 - (ii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 19 on any single ACT test date, or a combined SAT score of at least 890 on any single SAT test date.
 - (c) Students graduating from a Tennessee high school, completing high school in a Tennessee home school program, or obtaining a GED after January 1, 2003, but prior to January 1, 2004, are eligible to receive a Tennessee HOPE scholarship beginning the 2004-2005 academic year if the following criteria are met:
 - 1. A student graduating from an eligible high school shall:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0 and a final unweighted grade point average of at least 3.0 in the college core curriculum; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date.
 - 2. A student completing high school in a Tennessee home school program or graduating from a high school located in Tennessee that is not an eligible high school shall attain a composite ACT score of at least 23 on any single ACT test date or a combined SAT score of at least 1060 on any single SAT test date.
 - 3. A student obtaining a GED shall pass the GED tests with an average score of at least 525 and:

- (i) Attain a composite ACT score of at least 19 on any single ACT test date; or
 - (ii) Attain a combined SAT score of at least 890 on any single SAT test date.
4. All students meeting the requirements of subparagraph (2)(c)1, 2 or 3 of this rule, shall also meet each of the following criteria:
- (i) Attend an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year without a Tennessee HOPE scholarship and complete at least twenty-four (24) semester hours of credit at such institution with a cumulative grade point average of 2.75;
 - (ii) Maintain satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the postsecondary institution in which the student enrolled;
 - (iii) Apply for a Tennessee HOPE scholarship while enrolled as a student at a postsecondary institution during the 2003-2004 academic year prior to the May 1, 2004 priority deadline; and
 - (iv) Be admitted to and enroll in an eligible postsecondary institution for the 2004-2005 academic year.
- (d) Students entering active duty in the United States Armed Services within two years after graduating from a Tennessee high school, completing high school in a Tennessee home school program or obtaining a GED, and otherwise meets the criteria outlined in this rule may apply for a TELS award if the student:
- 1. Applies within seven years of the student's date of entry into military service, or within one year of the student's honorable discharge from military service, whichever comes first; and
 - 2. After graduation from high school, did not attend a postsecondary institution prior to entering military service.

Authority: T.C.A. §§49-4-905, 49-4-907, 49-4-908, 49-4-909, 49-4-910, 49-4-918 and 49-4-924.

1640-1-19-.06 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP NEED BASED SUPPLEMENTAL AWARD

Any student eligible for the Tennessee HOPE scholarship with an adjusted gross income attributable to the student that does not exceed \$36,000 will receive a need based supplemental award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the need based supplemental award. Notwithstanding the provisions of Rule 1640-1-19-.10 to the contrary, a student otherwise eligible for the Tennessee HOPE scholarship and meeting the requirements of this rule shall receive the need based supplemental award regardless of the student's eligibility for this grant in any prior year. A student eligible for both the need based supplemental award and the General Assembly Merit Scholarship shall be awarded the latter, but shall not simultaneously receive both awards.

Authority: T.C.A. §§49-4-915, 49-4-917 and 49-4-924.

1640-1-19-.07 ELIGIBILITY – GENERAL ASSEMBLY MERIT SCHOLARSHIP

- (1) Any student eligible for the Tennessee HOPE scholarship and enrolled in a program leading to an associate or baccalaureate degree will also receive a General Assembly Merit Scholarship if the following criteria are met:
 - (a) A student graduating from an eligible high school after January 1, 2004, shall:
 1. Achieve a final overall unweighted high school grade point average of at least 3.75;
 2. Achieve a final unweighted grade point average of at least 3.75 in the college core curriculum;
 3. Attain a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date; and
 4. Apply for a General Assembly Merit Scholarship in the senior year of high school.
 - (b) A student completing high school in a Tennessee home school program after January 1, 2004, or graduating from a high school located in Tennessee that is not an eligible high school after January 1, 2004, shall:
 1. Attain a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date;
 2. During the course of a home school program or while attending high school, enroll in at least four (4) courses totaling at least twelve (12) credit hours at an eligible postsecondary institution. Such courses shall meet or be equivalent to courses meeting the minimum degree requirements of the Board of Regents, other than the minimum degree requirements pertaining to physical education; and
 3. Achieve a cumulative grade point average of at least 3.0 for all courses attempted at any eligible postsecondary institution during the course of a home school program or while attending high school.
 - (c) A student graduating from an eligible high school after January 1, 2003, but prior to January 1, 2004, and seeking an associate or baccalaureate degree shall have:
 1. Achieved a final overall unweighted high school grade point average of at least 3.75;
 2. Achieved a final unweighted high school grade point average of at least 3.75 in the college core curriculum;
 3. Attained a composite ACT score of at least 29 on any single ACT test date or a combined SAT score of at least 1280 on any single SAT test date;
 4. Applied for the General Assembly Merit Scholarship in the year following graduation from high school and while attending, as a freshman, either an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year and attempt at least twenty-four (24) credit hours at such institution with a cumulative grade point average of 2.75;

5. Maintained satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the eligible postsecondary institution in which the student enrolled; and
 6. Been admitted to and enrolled in an eligible postsecondary institution for the 2004-2005 academic year.
- (2) A student eligible for both the need based supplemental award and the General Assembly Merit Scholarship shall be awarded the latter, but shall not simultaneously be awarded both.

Authority: T.C.A. §§49-4-916, 49-4-917 and 49-4-924.

1640-1-10-.08 ELIGIBILITY – TENNESSEE HOPE ACCESS GRANT

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE access grant a student shall have graduated from an eligible high school after January 1, 2004, and:
- (a) Have an adjusted gross income attributable to the student that does not exceed \$36,000;
 - (b) Apply for a Tennessee HOPE access grant and file a FAFSA in the senior year of high school;
 - (c) Graduate from an eligible high school after January 1, 2004, upon having completed curriculum requirements of the high school for graduation;
 - (d) Achieve a final overall unweighted high school grade point average of at least 2.75;
 - (e) Achieve a final unweighted grade point average of at least 2.75 in the college core curriculum; and
 - (f) Attain a composite ACT score of at least 18 on any single ACT test date or a combined SAT score of at least 860 on any single SAT test date.

Authority: §§49-4-920 and 49-4-924.

1640-1-19-.09 ELIGIBILITY – WILDER-NAIFEH TECHNICAL SKILLS GRANT

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Wilder-Naifeh technical skills grant a student seeking a diploma or certificate at a Tennessee Technology Center operated by the Board of Regents shall:
- (a) Be admitted to the institution in a program of study leading to a certificate or diploma; and
 - (b) Have not, at any time, been the recipient of a Tennessee HOPE scholarship or completed a certificate or diploma with a Wilder-Naifeh Technical Skills Grant.
- (2) No minimum number of hours of enrollment is required for eligibility for a Wilder-Naifeh technical skills grant.

- (3) An eligible student may receive a Wilder-Naifeh technical skills grant for all course work required by the institution for a program of study leading to a certificate or diploma. Wilder-Naifeh technical skills grants may not be used for continuing education courses.

Authority: T.C.A. §§49-4-921 and 49-4-924.

1640-1-19-.10 RETENTION OF AWARDS – GENERAL REQUIREMENTS

- (1) To retain a TELS award authorized by this chapter, a student at an eligible postsecondary institution shall continue to meet all applicable requirements for the scholarship and shall reapply by completing the FAFSA or Renewal FAFSA for the applicable award for each academic year.
- (2) Eligibility shall also be reviewed at the end of the semester in which the student has attempted a total of 24, 48, 72, or 96 semester hours. At the end of the semester in which the student has attempted a total of 24 semester hours, the student shall have achieved a cumulative grade point average of at least 2.75 to continue to receive the TELS award. At the end of the semester in which the student has attempted a total of 48, 72, or 96 semester hours, the student shall achieve a cumulative grade point average of at least 3.0 to continue to receive the TELS award.
- (3) Except as provided in paragraph (4) of this rule and Rules 1640-1-19-.17 and 1640-1-19-.18-which outline appropriate justification for medical and personal leaves of absence, a student may receive a Tennessee HOPE scholarship until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of 120 credit hours;
 - (c) Five years have passed from the date of the student's initial enrollment at any postsecondary institution.
- (4) The attempted credit hour limitation includes remedial and developmental studies and all regular college credit courses attempted after high school graduation. If a student enters the semester with less than 120 semester hours attempted and will surpass the 120 semester hours limit, he or she is eligible for payment for the full number of hours enrolled for that semester. If the student is enrolled in a specific undergraduate degree program that is designed to be more than 120 semester hours in length, the student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less. The student is eligible for payment for the full number of hours enrolled in the final semester. Regardless of the number of hours attempted, once the student has earned a bachelor's degree, he or she is ineligible for additional TELS awards.
- (5) A student who meets all other requirements for fourth or fifth year eligibility except that he or she is classified at the professional level rather than as an undergraduate, and has not been awarded a baccalaureate degree, is eligible if he or she was accepted into the professional level program of study that is an extension of the student's bachelor's degree program. Such student is eligible for a total of 136 semester credit hours, or the number of hours required for the degree, whichever is less.
- (6) If a student ceases to be eligible for any TELS award, except the need based supplemental award, at any time for any reason, then the student shall not be eligible to regain the TELS award or become eligible for another TELS award.

- (7) Except as provided by Rule 1640-1-19-.17 or 1640-1-19-.18, a student receiving a TELS award provided by this chapter shall maintain continuous enrollment at an eligible postsecondary institution and maintain satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is enrolled.

Authority: T.C.A. §§49-4-909, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921 and 49-9-924.

1640-1-19-.11 RETENTION OF AWARDS – TENNESSEE HOPE ACCESS GRANT

- (1) In addition to the general requirements for retention of award in Rule 1640-1-19-.10:
- (a) A Tennessee HOPE access grant shall be awarded to an eligible student only until the end of the semester in which the student has attempted a total of 24 credit hours. A student who is eligible for a Tennessee HOPE scholarship shall be ineligible for a Tennessee HOPE access grant.
 - (b) If a student receiving a Tennessee HOPE access grant has achieved a cumulative grade point average of at least 2.75 at the end of the semester in which the student has attempted 24 semester hours, the student shall be eligible for a Tennessee HOPE scholarship. The student will also receive the need based supplemental award referenced in Rule 1640-1-19-.06, if the adjusted gross income attributable to the student at the time of review does not exceed \$36,000.
 - (c) A student may receive a Tennessee HOPE scholarship after having received a Tennessee HOPE access grant until the first of the following events:
 - 1. The student has earned a baccalaureate degree;
 - 2. The student has attempted at any postsecondary institution a total of 120 semester hours, or if the student is enrolled in an undergraduate degree program required to be more than 120 semester hours in length, that student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less; or
 - 3. Five years from the date of the student's initial enrollment at any postsecondary institution have passed.

Authority: T.C.A. §§49-4-920 and 49-4-924.

1640-1-19-.12 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD PROCESS

- (1) On or before March 1 of each year all eligible high schools shall submit to the Corporation the name, social security number, unweighted overall grade point average, and unweighted college core grade point average for academically eligible seniors who received a composite ACT score less than 19 on any ACT single test date or a combined SAT score less than 890 on any single SAT test date, cumulative through the seventh semester.
- (2) On or before March 1 of each year all Tennessee high schools that are not eligible high schools shall submit to the Corporation the name, social security number, unweighted overall grade point average, and unweighted college core grade point average for academically eligible seniors who received a composite ACT score less than 23 on any ACT single test date or a combined SAT score less than 1060 on any single SAT test date, cumulative through the seventh semester.

- (3) On or before July 1 of each year, all Tennessee high schools shall revise and submit to the Corporation the information required of each in paragraphs 1 or 2 of this rule, cumulative through the eighth semester.
- (4) On or before September 1 of each year, all Tennessee high schools shall, to the extent it has not already done so, submit to the Corporation the following information for all students who graduated during the previous academic year:
 - (a) name;
 - (b) social security number;
 - (c) high school code;
 - (d) final unweighted overall grade point average;
 - (e) final unweighted college core grade point average;
 - (f) number of college core courses taken;
 - (g) number of Advanced Placement courses taken;
 - (h) ACT composite, verbal and math scores; and
 - (i) SAT composite, verbal and math scores.
- (5) On or before March 1, 2004, utilizing information provided on the student's high school transcript, all eligible postsecondary institutions shall submit to the Corporation the name, social security number, the number of college core courses taken in high school and the final unweighted college core and unweighted overall grade point averages from high school on students who after January 1, 2003, but before January 1, 2004:
 - (a) enrolled in the respective institutions in the fall 2003 and/or spring 2004 semesters; and
 - (b) graduated from an eligible high school and received a composite ACT score less than 19 on any ACT single test date or a combined SAT score less than 890 on any single SAT test date; or
 - (c) completed high school in a Tennessee home school program, obtained a GED or graduated from a high school located in Tennessee and received a composite ACT score less than 23 on any single ACT test date or a combined SAT score less than 1060 on any single SAT test date.

Authority: T.C.A. §§49-4-903 and 49-4-924.

1640-1-19-.13 CONTINUATION OF TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD

- (1) All students receiving a TELS award shall reapply for the award by the May 1 priority deadline each subsequent year. Students whose FAFSA or Renewal FAFSA is filed with and processed by the U. S. Department of Education on or before May 1 will be given priority in determining awards for the subsequent academic year. Application is made by filing a FAFSA or Renewal FAFSA as provided in Rule 1640-1-19-.03.

- (2) On or before July 1 of each year, all eligible postsecondary institutions shall submit to the Corporation the number of credit hours attempted and the cumulative grade point average of all students receiving a TELS award during the previous academic year.
- (3) On or before March 31, 2004, all eligible postsecondary institutions shall also submit to the Corporation the following information relative to each student enrolled in the institution who graduated from a Tennessee high school, completed high school in a Tennessee home school program or obtained a GED after January 1, 2003, but before January 1, 2004, and who as an entering freshman met the applicable qualifications of Rule 1640-1-19-.05(1) and (2)(c):
 - (a) the number of credit hours attempted in the fall 2003 and spring 2004 semesters; and
 - (b) the cumulative grade point average for the fall 2003 semester.
- (4) On or before July 1, 2004, each eligible postsecondary education institution shall update this information to include each student's cumulative grade point average through the spring 2004 semester.
- (5) Students whose eligibility could be affected by courses taken during the summer semester shall not be deemed to be eligible or ineligible based on the July 1 reports to the Corporation.

Authority: T.C.A. §§49-4-903, 49-4-911 and 49-4-924.

1640-1-19-.14 AWARD MADE IN ERROR

If a student receives a TELS award and it is later determined that all or a portion of the award was made in error, the student shall be required to reimburse the eligible postsecondary institution for the amount of the award made in error. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be refunded. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student will be ineligible for student aid from the Corporation until the refund is paid.

Authority: T.C.A. §49-4-924.

1640-1-19-.15 REFUND POLICY

If a student fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from the Corporation until the refund is paid.

Authority: T.C.A. §49-4-924

1640-1-19-.16 CONVERTING FROM FULL-TIME TO PART-TIME ENROLLMENT

- (1) Students enrolled in a full-time status, as of institutionally defined census date, may not convert to part-time status within the same semester and receive a scholarship award for that semester unless the student requests and the institution approves the change to part-time status.
- (2) An institution may allow a change from full-time to part-time status within the same semester only when there are documented medical or personal grounds. Such medical or personal grounds shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, or other extraordinary circumstances beyond the student's control where continued full-time attendance by the student creates a substantial hardship.
- (3) Each eligible postsecondary institution shall adopt procedures for considering student requests for change from full-time to part-time status within the semester. In the event an institution denies a student's request to change from full-time status to part-time status within a semester, the student may appeal the decision pursuant to Rule 1640-1-19-.23.
- (4) In the event that the decision to deny the change of status is upheld through the appeals process, the student shall be ineligible to regain the TELS award or become eligible for another TELS award.
- (5) In the event the change to part-time status is approved, the amount of the scholarship award shall be reduced in accordance with the provisions of Rule 1640-1-19-.02(4) regarding part-time awards.

Authority: T.C.A. §§49-4-911, 49-4-912 and 49-4-924.

1640-1-19-.17 PERSONAL OR MEDICAL LEAVE OF ABSENCE

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving an award(s) upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. Each eligible postsecondary institution shall adopt procedures for considering student requests for leaves of absence. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. In addition to the reasons outlined in Rule 1640-1-.18, allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. Acceptable reasons shall also include a student's participation in an internship or co-op program that is required or encouraged as part the academic program in which he/she is enrolled. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with Rule 1640-1-18-.23.
- (2) A student granted a medical or personal leave of absence who resumes their education at an eligible postsecondary institution shall retain TELS award eligibility until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of 120 semester hours, or if the student is enrolled in an undergraduate degree program required to be more than 120 semester hours in length, that student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less; or

- (c) The sum of the number of calendar years the student attended a postsecondary institution prior to the leave of absence and the number of calendar years of attendance after the leave of absence equals five calendar years.

Authority: T.C.A. §§49-4-903, 49-4-919 and 49-4-924.

1640-1-19-.18 MILITARY MOBILIZATION OF ELIGIBLE STUDENTS

- (1) Members of the United States Armed Services, National Guard, or Armed Forces Reserves receiving a TELS award who are mobilized for active duty during a semester that is already in progress shall be granted a personal leave of absence by the eligible postsecondary institution the student is attending and shall not have their TELS award eligibility negatively impacted.
- (2) If, as a result of being mobilized, a student elects to completely withdraw from an eligible postsecondary institution, then the hours attempted during the semester will not be taken into consideration for purposes of determining future TELS award eligibility.
- (3) If due to a military mobilization the student elects to receive an “incomplete” in any or all courses, the provisions of Rule 1640-1-19-.19(13) shall apply.
- (4) Upon re-enrollment within one year following mobilization, the student’s TELS award eligibility will resume as if no break in enrollment had occurred and shall retain TELS award eligibility until the first of the following events:
 - (a) The student has earned a baccalaureate degree;
 - (b) The student has attempted at any postsecondary institution a total of 120 semester hours, or if the student is enrolled in an undergraduate degree program required to be more than 120 semester hours in length, that student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less; or
 - (c) The sum of the number of calendar years the student attended a postsecondary institution prior to the leave of absence and the number of calendar years of attendance after the leave of absence equals five calendar years.
- (5) An eligible postsecondary institution shall be authorized to consider a request for a leave of absence from a student whose spouse, child, father or mother is mobilized for active duty as a valid basis for a personal leave of absence. This request shall be made in accordance with the provisions of this rule. If the request is granted the student shall receive the same accommodations described above.

Authority: T.C.A. §§49-4-903, 49-4-919 and 49-4-924.

1640-1-19-.19 CALCULATION OF POSTSECONDARY CUMULATIVE GRADE POINT AVERAGE

- (1) The postsecondary cumulative grade point average used to determine eligibility for a renewal of a TELS award, must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all credit hours attempted after high school graduation, except as otherwise provided in this rule.

- (2) All credit hours attempted at all postsecondary institutions the student has attended and their corresponding grades must be included in the calculation of the postsecondary cumulative grade point average, regardless of whether the receiving institution will apply the credit hours toward the student's degree requirements. Credit hours that were repeated shall be included in the postsecondary cumulative grade point average calculation and are counted towards the limitation on credit hours.
- (3) Credit hours attempted prior to high school graduation, completion of a home school program in Tennessee or achieve a GED do not count toward the limitation on credit hours provided in Rule 1640-1-19-.11(3), nor are the grades for those classes included in the postsecondary cumulative grade point average.
- (4) Credit hours earned by examination are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3).
- (5) Credit hours attempted as part of a diploma or certificate program of study are not considered to be college credit hours and therefore shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3), unless those hours are accepted toward a degree.
- (6) Remedial and developmental studies and independent studies courses are eligible for payment with TELS awards and shall be included in the calculation of the postsecondary cumulative grade point average and shall be counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3).
- (7) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a TELS award nor will the credit hours be included in the calculation of the postsecondary cumulative grade point average or in the credit hour limitation provided in Rule 1640-1-19-.10(3).
- (8) Continuing education courses are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or counted towards the limitation on credit hours provided in Rule 1640-1-19-.10(3).
- (9) Students who obtain a grade change shall notify the financial aid office within 30 calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a TELS award, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the TELS award may be adjusted in the current award year. The eligible postsecondary institution shall make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. If the student's application for reinstatement is denied, he/she may appeal the decision in accordance with Rule 1640-1-19-.23.
- (10) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for TELS award payment for distance learning courses if all other eligibility requirements are met. Students may take courses through more than one eligible postsecondary institution during the same semester. Payment for the distance learning courses shall be made in the same manner as transient students as provided in Rule 1640-1-19-.21.
- (11) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an internship or co-op program if the student receives college credit from the internship or co-op experience and must pay tuition and fees. The credit hours shall be included in the postsecondary cumulative grade point average and count toward the limitation on credit hours as provided in Rule 1640-1-19-.10(3).

- (12) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an alternative study or study abroad program if all other eligibility requirements are met. The eligible postsecondary institution which is the student's home institution must approve the alternative study or study abroad program for credit toward the student's degree and the number of hours that will be applied toward the degree prior to the student's departure.
- (13) Courses that appear on a student's transcript as an "incomplete" shall be considered credit hours attempted. The student's TELS award eligibility, however, shall be determined by excluding the credit hours attributable to the course for which an "incomplete" has been assigned from the cumulative grade point average calculation.
- (a) If the student fails to retain eligibility for a TELS award as a result of the calculation, but later becomes eligible when the grade for the "incomplete" course is reported, the student is eligible to receive a TELS award retroactively within the award year and shall retain eligibility. Retroactive TELS awards for previous award years shall be added to the current award year. The eligible postsecondary institution shall, however, make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. It shall be the responsibility of the student to notify the financial aid office at the eligible postsecondary institution that a grade has been awarded and request that the TELS award be reinstated. Each eligible postsecondary institution shall develop a standard form for use by students to comply with this provision. If the student's application for reinstatement is denied, he/she may appeal the decision in accordance with Rule 1640-1-19-.23.
- (b) If the student retains eligibility for a TELS award as a result of the calculation, but later becomes ineligible when the grade for the "incomplete" course is reported, then the student shall be ineligible for all TELS awards. Additionally, the student shall reimburse the institution for TELS awards received in the interim.
- (14) If the student is otherwise eligible to receive a TELS award, but does not receive TELS funding, or TELS funding is reduced because his or her cost of attendance is covered by other aid, all credit hours attempted that semester shall still apply to the credit hour limitation provided in Rule 1640-1-19-.10(3).

Authority: T.C.A. §§49-4-903 and 49-4-924.

1640-1-19-.20 TRANSFER STUDENTS

A TELS recipient transferring from an eligible postsecondary institution to another is eligible for a TELS award if all eligibility requirements continue to be met.

Authority: T.C.A. §§49-4-910 and 49-4-924.

1640-1-19-.21 TRANSIENT STUDENTS

A transient student is eligible to receive a TELS award if all other eligibility requirements are met and if both the home and host institutions are eligible postsecondary institutions. The home institution shall award the TELS funds to the transient student based on certification of eligibility from the host institution. The home institution shall certify to the Corporation that the student is eligible for a TELS award. Each eligible postsecondary institution shall develop a process to effectuate each provision of this rule and shall

notify its students of the process and the availability of the necessary forms to comply with the requirements. At the end of the semester the host institution shall provide the student's home institution with all information necessary for the home institution to determine continued TELS award eligibility.

Authority: T.C.A. §49-4-903 and 49-4-924.

1640-1-19-.22 DENIAL OF INITIAL ELIGIBILITY – FAILURE TO TIMELY ENROLL

A student who fails to timely enroll in an eligible postsecondary institution as required by Rule 1640-1-19-.05(1) may be granted an exception if the student failed to meet the requirement for any reason provided for in this rule. An exception shall be granted only for medical or personal reasons. Acceptable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment expected of all students of that faith, or other extraordinary circumstances beyond the student's control where timely enrollment by the student would create a substantial hardship. In the event a student's request for an exemption for failing to timely enroll is denied, the student may appeal the decision pursuant to Rule 1640-1-19-.23.

Authority: T.C.A. §§49-4-903 and 49-4-924.

1640-1-19-.23 APPEAL AND EXCEPTION PROCESS

- (1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of hearing appeals from decisions denying or revoking applicants' TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a hearing and shall make such determination no later than 14 calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a hearing is required the IRP shall hear the appeal no later than 14 calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The IRP shall provide a copy of the written decision to the appellant as soon as practicable. For the purposes of this rule, it will be presumed that the decision was delivered to the appellant two calendar days after the decision was placed in the U.S. Postal Service addressed to the appellant's official mailing address according to the eligible postsecondary institution's records.
- (2) A three person TELS Award Appeals Panel shall be appointed by the Corporation's Executive Director for purpose of hearing appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal, with the Corporation within 14 calendar days from the date that the decision was delivered to the

student. The record of the IRP hearing shall be provided to the Corporation by the eligible postsecondary institution that held the appeal. The Appeals Panel may award or reinstate the student's TELS award without a hearing. This decision shall be made no later than 14 calendar days after an appeal is properly filed and the record from the IRP hearing is received. If the Appeals Panel determines that a hearing is required, it shall provide the appellant with at least 14 calendar days notice of the hearing date, such notice shall include the time and location of the hearing. The Appeals Panel shall hear the appeal no later than 45 calendar days after the appeal is properly filed, unless an extension is requested by the appellant and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than 14 calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant as soon as practicable. The Appeals Panel is the final administrative appeal.

- (3) The authority of the IRPs and the TELS Award Appeals Panel shall be strictly limited to consideration of appeals arising from eligibility determinations made by an eligible postsecondary institution or the Corporation. Neither appeals panel shall have the authority to rule on the validity of any information provided to the eligible postsecondary institution or Corporation by another entity on which its decision to deny or revoke a TELS award was based, including, but not limited to high school grade point average, ACT or SAT scores, or grades from another eligible postsecondary institution. Additionally, neither appeals panel shall have the authority to consider requests for exceptions to the high school grade point average or curriculum track requirements.

Authority: T.C.A. §49-4-924.

The public necessity rules set out herein were properly filed in the Department of State on the 29 day of December, 2003, and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 11th day of June, 2004. (12-23)

RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 INSURANCE DIVISION

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A on the 5th Floor of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 18th day of February, 2004.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled hearing date, to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the Division’s ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 or (615) 741-6500.

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

SUBSTANCE OF PROPOSED RULE

CHAPTER 0780-1-56 EDUCATIONAL REQUIREMENTS

AMENDMENTS

Chapter 0780-1-56 Educational Requirements is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

CHAPTER 0780-1-56 EDUCATIONAL REQUIREMENTS

TABLE OF CONTENTS

0780-1-56-.01 Purpose	0780-1-56-.05 Extensions of time
0780-1-56-.02 Basic requirements	0780-1-56-.06 Reciprocity
0780-1-56-.03 Qualifying programs	0780-1-56-.07 Penalty
0780-1-56-.04 Control and reporting systems	0780-1-56-.08 Educational advisory committee

0780-1-56-.01 PURPOSE

- (1) The purpose of this chapter is to prescribe the continuing education requirements for insurance/HMO producers, hereinafter, "insurance producers" licensed pursuant to T.C.A. §§ 56-6-106, 56-6-107 and 56-32-214; to establish standards by which continuing education will be evaluated for awarding of credit hours; and to ensure compliance with the statutes and these requirements by requiring periodic reporting of educational achievements.
- (2) As used in this chapter, insurance producer means an individual who has an agency contract or agreement and an appointment with an insurer to sell, solicit or negotiate a policy of insurance on the insurer's behalf; and/or an individual who is appointed or employed by a health maintenance organization "HMO" and who engages in solicitation for membership in such organization; but does not include an individual enrolling members on behalf of an employer, union or other organization to which a master subscriber contract has been issued.

Authority: T.C.A. §§ 56-6-102, 56-6-107(c), 56-6-115, 56-6-124(c), 56-32-214, 56-35-122, and 56-35-201

0780-1-56-.02 BASIC REQUIREMENTS

- (1) Continuing Education – Every individual seeking annual renewal of a license pursuant to T.C.A. § 56-6-107(c), unless otherwise exempt pursuant to such Section, must satisfactorily complete twelve (12) credit hours of study in approved courses, programs of instruction or seminars each year following the date of issuance of the original license. Certificates of completion for courses previously submitted and approved for credit may only be repeated and submitted for credit after three (3) years.

Authority: T.C.A. §§ 56-6-107(c), 56-6-124(c), 56-32-214, 56-35-122, and 56-35-201

0780-1-56-.03 QUALIFYING PROGRAMS

- (1) In order to qualify for credit towards satisfaction of the requirements of this chapter, an educational program must be a formal program of learning which contributes directly to the professional competence of the insurance producer and such program must meet the standards outlined for continuing educational programs.
- (2) Formal programs requiring attendance may be considered for credit if:
 - (a) A detailed outline is prepared and presented to the Department for approval;
 - (b) The program is at least one (1) credit hour [fifty (50) minutes] in length; and
 - (c) The program is conducted by a qualified instructor, discussion leader or lecturer.
- (3) An instructor of a certified continuing education program shall receive continuing education credit. Credit for presenting a certified continuing education program will be awarded only for the first presentation, unless a program has been substantially revised since credit was last awarded. The amount of credit awarded shall not exceed two (2) times the number of approved class hours for the program.
- (4) The list of subjects that will be acceptable for continuing education credits includes, but is not limited to the following:

- (a) Insurance, annuities, and risk management;
 - (b) Insurance laws and regulations;
 - (c) Mathematics, statistics, and probability;
 - (d) Economics;
 - (e) Business law;
 - (f) Finance;
 - (g) Taxes;
 - (h) Business environment, management or organization; and
 - (i) Subjects other than those listed above may be acceptable if the insurance producer can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this chapter. The responsibility for substantiating that a particular program meets the requirements of this chapter rests solely upon the insurance producer.
- (5) Subjects that will not be acceptable for continuing education credits include, but are not limited to the following:
- (a) Any course used to prepare for taking an insurance licensing examination;
 - (b) Committee service in any professional organization;
 - (c) Computer science courses;
 - (d) Motivational, psychology, or sales training courses; and
 - (e) Securities courses, other than variable annuities.
- (6) Continuing education programs which shall be deemed to meet the Commissioner's standards, if properly submitted to the Department are:
- (a) Any part of the Life Underwriter Training Counsel Life Course Curriculum or Health Course;
 - (b) Any part of the American College "CLU-CHFC" diploma curriculum;
 - (c) Any part of the Insurance Institute of America's programs;
 - (d) Any part of the American Institute for Property and Liability Underwriters Chartered Property Casualty Underwriter (CPCU) professional designation program;
 - (e) Any part of the Certified Insurance Counselor Program;
 - (f) Any part of the American Land Title Association's, the Land Title Institute's, or the Tennessee Land Title Association's programs;

- (g) Any program relating to the field of real property law or title insurance law approved by the Committee on Continuing Legal Education of the Supreme Court of Tennessee; and
 - (h) Successful completion of any insurance related course approved by the Commissioner and taught by an accredited college or university per credit hour granted.
- (7) Any correspondence or self-study program approved by the Commissioner shall qualify for the equivalent number of classroom hours, provided that:
- (a) All correspondence or self-study programs shall include a final examination; and
 - (b) Any provider of correspondence or self-study programs shall be the originally published provider or have the written authorization of the originally published provider to present such program.
- (8) All programs for continuing education must be submitted for approval on a form prescribed by the Commissioner and submitted at least thirty (30) days prior to the program's presentation.
- (9) The Commissioner specifically reserves the right to approve and disapprove credit for continuing education claimed under this chapter.
- (10) The Commissioner may require any original publisher or provider to submit all material to be used in the program to the Department for review.
- (11) Any applicant who seeks approval as a provider of certified continuing education programs shall submit an application on a form prescribed by the Commissioner with a non-refundable filing fee in the amount of five hundred (\$500) dollars. All providers shall be required to annually renew their authority to provide certified continuing education programs on a form prescribed by the Commissioner with a non-refundable filing fee in the amount of two hundred and fifty (\$250) dollars. Any material change in or to a certified continuing education program shall require prior approval before an insurance producer may receive credit for such altered program. Program certification shall expire at such time as the Commissioner may determine. State educational institutions are exempt from these filing fees, but must comply with all other requirements in order to obtain/maintain provider authority.
- (12) All providers must maintain, for not less than four (4) years from the date the program was presented, a record of persons attending each program and upon completion of the program requirements, provide a certificate of completion with credit hours earned to each successful student. The certificate shall bear the provider's identification number as assigned by the Commissioner upon the granting of authority to provide continuing education programs.
- (13) Any insurance company, trade association, individual corporation, partnership, firm or agency that has been approved and been given authority by the Commissioner to be a continuing education provider under this chapter shall meet the following continuing minimum operational standards:
- (a) A minimum of one (1) business office open to the public, with a minimum of one (1) telephone to be answered by an employee, during normal business hours, equipped with the usual office equipment such as a desk, filing cabinets, typewriter, supplies, and other similar items.
 - (b) Classroom(s) (not applicable to self-study programs) in compliance with the Americans with Disabilities Act (ADA), comprised of a room large enough to accommodate a minimum of ten (10) students with comfortable chairs and appropriate writing surfaces for each student and a chalk board or flip chart.

Authority: T.C.A. §§ 56-6-107(c), 56-6-124(c), 56-32-214, 56-35-122, and 56-35-201.

0780-1-56-.04 CONTROL AND REPORTING SYSTEMS

- (1) Each insurance producer shall annually submit on a form prescribed by the Commissioner, a signed statement setting forth the continuing education program(s) in which the insurance producer has participated during the reporting period. Such insurance producer shall retain documentation supporting such statement for the most recent two (2) year period subsequent to the date of submission.
- (2) If any continuing education credit hours claimed in a statement submitted by an insurance producer pursuant to paragraph (1) of this Section are disapproved, the Commissioner shall notify such insurance producer of the reason for the disapproval. The Commissioner may allow a specified period of time for correction of the deficiencies noted.
- (3) The original certificate of completion received for each continuing education program shall be retained by the insurance producer as evidence of completion of the program for the most recent two (2) year period. The statement submitted by the insurance producer will be reviewed and verified by the Commissioner.
- (4) The responsibility for establishing whether a particular program for which credit is claimed is acceptable and meets the continuing educational requirements as set forth in this chapter rests solely with the insurance producer claiming the credit.
- (5) The Commissioner may require providers to electronically transmit a record of those students who have successfully completed a continuing education program to the Department of its designee.

Authority: T.C.A. §§ 56-6-107(c), 56-32-214, 56-35-122, and 56-35-201

0780-1-56-.05 EXTENSIONS OF TIME

- (1) The Commissioner may, upon written request, extend the time in which an insurance producer must comply with or grant exception to the continuing education requirements of this chapter for reasons of poor health, military service, or other reasonable and just causes.
- (2) Any insurance producer who requests or is granted an extension of time under this chapter shall remain subject to rule 0780-1-56-.04, and shall note such extension on any report required thereunder.

Authority: T.C.A. §§ 56-6-107(e), 56-35-122, and 56-35-201.

0780-1-56-.06 RECIPROCITY

A non-resident producer's satisfaction of the producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the non-resident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis. The Commissioner may, within his/her sole discretion, enter into reciprocity agreements with other state's insurance regulators to grant recognition to the continuing education credits received from other jurisdictions for non-resident insurance producers.

Authority: T.C.A. §§56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-32-214, 56-35-122, and 56-35-201.

0780-1-56-.07 PENALTY

Any individual or provider who violates the provisions of this chapter shall be subject to disciplinary action pursuant to T.C.A. § 56-6-112.

Authority: T.C.A. §§56-6-107, 56-6-112, 56-6-124, 56-32-214, 56-35-122, and 56-35-201.

0780-1-56-.08 EDUCATIONAL ADVISORY COMMITTEE

- (1) A continuing educational advisory committee comprised of no less than three (3) and no more than seven (7) individuals who are representatives from each segment of the insurance industry, may be appointed by and shall serve at the pleasure of the Commissioner to advise the Commissioner concerning continuing educational standards. The chairman of the committee shall be appointed by and shall serve at the pleasure of the Commissioner. All members of the committee shall serve without any compensation.
- (2) A majority of those present at any meeting of the Educational Advisory Committee shall be deemed to be a quorum for purposes of acting to perform the duties of the committee pursuant to this chapter. In the event of a tie vote, the chairman shall vote to break the tie.
- (3) The Committee may advise the Commissioner on program content and exceptions as permitted under this chapter.
- (4) The Committee will be available to consider other related matters as the Commissioner may assign.

Authority: T.C.A. §§ 56-6-102, 56-6-107(c), 56-6-124(c), 56-35-122, and 56-35-201.

0780-1-56-.08 EFFECTIVE DATE

The effective date of chapter 0780-1-56 is July 1, 2004.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of December, 2003. (12-27)

**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 Paris City Hall Meeting Room, 100 N. Caldwell, Paris, TN 38242 on February 19, 2004 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>
Henry County (40)	
40-511	Celotex/County Home Site Paris, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of December, 2003. (12-24)

**THE TENNESSEE COMMISSION ON FIRE FIGHTING PERSONNEL
STANDARDS AND EDUCATION - 0360**

There will be a hearing before the Tennessee Commission on Fire Fighting Personnel Standards and Education to consider the promulgation of rules pursuant to Tenn. Code Ann. § 4-24-107. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place at the Park Vista Hotel located at 939 Ridge Lake Boulevard, Memphis, Tennessee 38120, at one o'clock (1:00) P.M., CST on the 5th day of March, 2004.

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

For a copy of this notice of rulemaking hearing contact: Terry Woody, Executive Director, Fire Fighting Commission, 500 James Robertson Parkway, Davy Crockett Tower, Sixth Floor, Nashville, Tennessee 37243, and (615) 741-6780.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0360-1-1
GENERAL**

NEW RULES

TABLE OF CONTENTS

0360-1-1-.03 Mission Statement

0360-1-1-.03 MISSION STATEMENT.

The Commission will endeavor to raise the standards of firefighting personnel who engage in its certification and training programs by enabling Tennessee firefighters to be better prepared through training courses facilitating the skills and knowledge necessary to save lives and property, and to vigorously promote firefighting safety, efficiency, decorum and ethical considerations throughout the certification process.

Authority: T.C.A.. § 4-24-107.

**CHAPTER 0360-6-1
MISCELLANEOUS CERTIFICATION STANDARDS**

NEW RULES

TABLE OF CONTENTS

0360-6-1-.03 Domestic Violence Training

0360-6-1-.05 Reciprocity

0360-6-1-.04 Progression

0360-6-1-.03 DOMESTIC VIOLENCE TRAINING.

The Commission's curriculum requirements on firefighting standards and education will include materials concerning domestic violence training pursuant to Tenn. Code Ann. § 4-24-111.

Authority: T.C.A.. §§4-24-107 and 4-24-111.

0360-6-1-.04 PROGRESSION.

Unless otherwise stated in these rules, an applicant may progress to another level of certification after ninety (90) days from the date of the last certification awarded.

Authority: T.C.A.. §4-24-107.

0360-6-1-.05 RECIPROCITY.

Reciprocity of certification shall be considered by the Commission for applicants who have achieved certification from another agency that has achieved national accreditation from an organization recognized by the Commission and who meet the criteria established by the Commission.

Authority: T.C.A.. §4-24-107.

**CHAPTER 0360-1-2
DEFINITIONS**

AMENDMENTS

Rule 0360-1-2-.01 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0360-1-2-.01 DEFINITIONS.

- (1) Commission shall mean the Tennessee Commission on Fire Fighting Personnel Standards and Education.
- (2) Department shall mean the agency that provides fire protection service to a district and agrees to abide by standards adopted by the Commission.
- (3) Journeyman Fire Fighter shall be equivalent to Fire Fighter II.
- (4) TC shall mean the "Training Committee" composed of equal representation from the Department officers and employees.
- (5) Trainee shall mean a member of a department who is engaged in learning the craft of Journeyman Fire Fighter or Fire Fighter II.

Authority: T.C.A.. §§4-24-106 and 4-24-107.

**CHAPTER 0360-2-2
INSTRUCTOR CERTIFICATION**

AMENDMENTS

Paragraph (1) of rule 0360-2-2-.01 Interim Fire Department Instructor is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (1) of rule 0360-2-2-.01 shall read as follows:

0360-2-2-.01 INTERIM FIRE DEPARTMENT INSTRUCTOR.

- (1) An individual from a participating fire department may apply to be classified by the Commission as an Interim Instructor. This Interim Instructor classification shall be valid for a period of three (3) years and cannot be renewed.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Paragraph (3) of rule 0360-2-2-.01 Interim Fire Department Instructor is amended by deleting the text of the paragraph in its entirety and substituting instead the following language, so that, as amended, paragraph (3) of rule 0360-2-2-.01 shall read as follows:

- (3) The applicant must take the Journeyman Fire Fighter/Fire Fighter II examination within twelve (12) months of receiving his/her Interim Instructor Classification, and if unsuccessful, take it at least two (2) times each calendar year until a passing score is achieved, or if he/she so chooses, he/she may start at the Fire Fighter I level but must progress through the Journeyman Fire Fighter/Fire Fighter II level within a period of three (3) years.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

**CHAPTER 0360-3-1
CLASSIFICATIONS FOR FULL-TIME AND VOLUNTEER FIRE FIGHTERS**

AMENDMENTS

Rule 0360-3-1-.01 Apprentice Recruit Fire Fighter is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0360-3-1-.01 RECRUIT FIREFIGHTER.

- (1) A Recruit Fire Fighter is an individual recruited by a participating fire department after the date such department enters into the Commission's programs.
- (2) A Recruit Fire Fighter shall serve a probationary period to demonstrate the willingness and ability to perform the duties demanded of a fire fighter at fires and other scenes of emergency, as well as the willingness and ability to perform the routine duties in the station and elsewhere as assigned. The length of the probationary period shall be determined by the local department.
- (3) A Recruit Fire Fighter shall serve at least twelve (23) months in this classification or complete two-hundred forty (240) hours of formal entry level training which has the prior approval of the Commission before qualifying to become a Fire Fighter I.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Rule 0360-3-1-.02 Apprentice Fire Fighter I/Fire Fighter I is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0360-3-1-.02 FIRE FIGHTER I.

- (1) A Fire Fighter I must successfully complete all of the requirements of Recruit Fire Fighter as prescribed in these rules.
- (2) A Fire Fighter I must satisfactorily pass the examination(s) as promulgated by the Commission.
- (3) A Fire Fighter I shall serve at least twelve (12) months in the classification before qualifying to become a Journeyman Fire Fighter/Fire Fighter II.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Paragraph (1) of rule 0360-3-1-.03 Journeyman Fire Fighter/Fire Fighter II is amended by deleting the language “Apprentice Fire Fighter I/” so that, as amended, paragraph (1) of rule 0360-3-1-.03 shall read as follows:

- (1) A Journeyman Fire Fighter/Fire Fighter II must successfully complete all of the requirements of Fire Fighter I as prescribed in these rules.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

**CHAPTER 0360-4-1
EXAMINATIONS**

AMENDMENTS

Rule 0360-4-1-.05 Retesting is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0360-4-1-.05 RETESTING. An applicant failing any examination may retake such examination, after 30 days, at the next regularly scheduled examination or any other examination thereafter.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Rule 0360-4-1-.06 Examination Form is amended by deleting the text of the rule in its entirety, and by substituting instead the following language, so that, as amended, the rule shall read:

0360-4-1-.06 EXAMINATION FORM. THE EXAMINATION FOR EACH CLASSIFICATION SHALL BE IN THE FOLLOWING FORM:

- (1) The examination for Fire Fighter I shall consist of a performance and a written examination. The subjects tested for will be substantially derived from the Performance Standards for Fire Fighter I as set forth in Chapter 0360-6-1.

- (2) The examination for Journeyman Fire Fighter/Fire Fighter II shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Journeyman Fire Fighter/Fire Fighter II as set forth in Chapter 0360-6-1.
- (3) The examination for Fire Department Instructor I shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Department Instructor I as set forth in Chapter 0360-6-1.
- (4) The examination for Fire Department Instructor II shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Department Instructor II as set forth in Chapter 0360-6-1.
- (5) The examination for Fire Department Instructor III shall consist of a performance and a written examination. The subject tested will be substantially derived from the Performance Standards for Fire Department Instructor III as set forth in Chapter 0360-6-1.
- (6) The examination for Fire Officer I shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer I as set forth in Chapter 0360-6-1.
- (7) The examination for Fire Officer II shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer II as set forth in Chapter 0360-6-1.
- (8) The examination for Fire Officer III shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer III as set forth in Chapter 0360-6-1.
- (9) The examination for Fire Officer IV shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer IV as set forth in Chapter 0360-6-1.

Authority: T.C.A.. § 4-24-107.

CHAPTER 0360-5-1 REVOCATION OF CERTIFICATION

AMENDMENTS

Rule 0360-5-1-.02 Separation from Active Fire Service is amended by deleting the language and number “one (1) year” in the first sentence between the words “of” and “after”, and substituting instead the language and number “three (3) years”, so that, as amended, the first sentence of rule 0360-5-1-.02 shall read as follows:

An individual’s certification will automatically terminate upon the expiration of three (3) years after such person ceases to be an active member of a fire department; provided, however, that the certification will not terminate if the individual can show to the satisfaction of the Commission through the Training Committee that he/she is absent due to extended illness or injury not to exceed three (3) years or is actively pursuing advanced training or education related to fire fighting and that this pursuit is the reason the individual is no longer a member of a fire department.

Authority: T.C.A.. § 4-24-107.

**CHAPTER 0360-6-1
MISCELLANEOUS CERTIFICATION STANDARDS**

AMENDMENTS

Rule 0360-6-1-.01 Adoption by Reference is amended by deleting the text of the rule in its entirety, and substituting instead the following language, so that, as amended, the rule shall read as follows:

0360-6-1-.01 ADOPTION BY REFERENCE.

- (1) The Commission adopts by reference as currently amended the following National Fire Protection Association (NFPA) Standards in their entirety unless otherwise provided herein:

1001	Fire Fighter Professional Qualifications
1002	Fire Apparatus Driver/Operator Professional Qualifications
1003	Professional Qualifications for Airport Fire Fighters
1021	Fire Officer Professional Qualifications
1031	Professional Qualifications for Fire Inspector and Plan Examiner
1033	Professional Qualifications for Fire Investigator
1035	Professional Qualifications for Public Fire and Life Safety Educator
1041	Fire Service Instructor Professional Qualifications
1051	Wildland Firefighter Professional Qualifications

Authority: T.C.A.. § 4-24-107.

**CHAPTER 0360-7-1
SALARY SUPPLEMENT**

AMENDMENTS

Subparagraph (h) of paragraph (1) of rule 0360-7-1-.01 Minimum Employment Standards - Definitions is amended by deleting the text of the subparagraph in its entirety, and substituting instead the following language, so that, as amended, subparagraph (h) of paragraph (1) of rule 0360-7-1-.01 shall read as follows:

- (h) have passed a physical examination by a licensed physician which, at minimum, meets the requirements of Section E of OSHA 1910.134; and

Authority: T.C.A.. §§4-24-202 and 4-24-107.

Paragraph (1) of rule 0360-7-1-.04 Entry Level Personnel is amended by deleting the language “Apprentice Fire Fighter I”, so that, as amended, paragraph (1) of rule 0360-7-1-.04 shall read as follows:

- (1) It shall be mandatory for all qualified personnel that have entered the Fire Service after December 31, 1990 to become certified, when eligible, at the Fire Fighter I level and progress when eligible through the Journeyman Fire Fighter/Fire Fighter II level of certification in order to become eligible for supplemental pay.

Authority: T.C.A.. §§4-24-201 and 4-24-107.

Part 2 of subparagraph (b) of paragraph (4) of rule 0360-7-1-.05 Requirements for In-Service Training Programs is amended by deleting the text of part 2 of the subparagraph in its entirety, and by substituting the following language, so that, as amended, part 2 of subparagraph (b) of paragraph (4) of rule 0360-7-1-.05 shall read as follows:

2. Four (4) hours on safety and stress management, or domestic violence recognition training; and

Authority: T.C.A.. §§4-24-202 and 4-24-107.

Subparagraph (d) of paragraph (6) of rule 0360-7-1-.05 Requirements for In-Service Training Programs is amended by deleting the text of the subparagraph in its entirety, and by substituting the following language, so that, as amended, subparagraph (d) of paragraph (6) of rule 0360-7-1-.05 shall read as follows:

- (d) The test should be developed, administered and scored by the Training Officer and Instructor. Each trainee must score at least seventy percent (70%). Only one retest will be allowed for individuals failing to achieve 70%.

Authority: T.C.A.. §§4-24-202 and 4-24-107.

REPEALS

Rule 0360-2-2-.05 Fire Department Instructor IV is repealed.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Rule 0360-3-1-.04 Incumbent Personnel is repealed.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Rule 0360-3-1-.08 Fire Department Instructor IV is repealed.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Rule 0360-6-1-.02 Fire Department Instructor I/Fire Officer Progression is repealed.

Authority: T.C.A.. § § 4-24-106 and 4-24-107.

Rule 0360-7-1-.03 Incumbent Personnel is repealed.

Authority: T.C.A. § 4-24-201 and 4-24-107.

The notice of rulemaking set out herein was properly filed in the Department of State on the December 31st, 2003. (12-28)

**DEPARTMENT OF HEALTH - 1200
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 Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 19th day of February, 2004.

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-.09, Renewal of License, is amended by adding the following language as new subparagraph (2) (b) and renumbering the remaining subparagraph accordingly:

- (2) (b) An applicant for reinstatement must comply with the continuing education requirements of rule 1200-30-1-.12.

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

Rule 1200-30-1-.12, Continuing Education, is amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, and is further amended by adding the following language as part (4) (c) 4., and is further amended by deleting paragraph (5) but not its subparagraphs and substituting instead the following language, and is further amended by adding the following language as new subparagraph (5) (c), and is further amended by deleting subparagraph (6) (b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (6) (c) and renumbering the remaining subparagraphs accordingly,

and is further amended by deleting subparagraph (8) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (b), the new part (4) (c) 4., the new paragraph (5) but not its subparagraphs, and the new subparagraphs (5) (c), (6) (b), (6) (c) and (8) (f) shall read:

- (3) (b) Application for approval shall contain the topic, credentials of the speaker or presenter, a brief description of program content or content objectives, the date and length in minutes of each presentation, the place of instruction and the sponsoring institution or organization. Application for approval of Multi-Media courses, as provided in subparagraph (5) (c), shall submit this information on an annual basis as applicable, and shall also submit a brief description of the course format.
- (4) (c) 4. Certificates or letters verifying successfully passing a written post experience examination to evaluate material retention upon completion of a Multi-Media course, as provided in subparagraph (5) (c). The certificates or letters must include the contact hours awarded (continuing education units must be converted to contact hours), date completed, program title, licensee's name, and license number.
- (5) It is the licensee's responsibility, using his professional judgment, to determine whether or not a particular educational/training experience is applicable and appropriate to his professional development and meets the standards specified in these rules.
- (5) (c) Multi-Media
 - 1. Notwithstanding the provisions of part (5) (b) 3., continuing education courses may be presented in the traditional lecture and classroom formats or, in accordance with paragraphs (2) and (3) and with successful completion of a written post experience examination to evaluate material retention, courses may be present in Multi-Media formats. Multi-Media courses may include courses utilizing:
 - (i) The Internet
 - (ii) Closed circuit television
 - (iii) Satellite broadcasts
 - (iv) Correspondence courses
 - (v) Videotapes
 - (vi) CD-ROM
 - (vii) DVD
 - (viii) Teleconferencing
 - (ix) Videoconferencing
 - (x) Distance learning
 - 2. A maximum of fifteen (15) contact hours may be granted for multi-media courses during each calendar year.

- (6) (b) Reactivation of revoked license – No person whose license has been revoked for failure to comply with the continuing education contact hours requirement may be reinstated without complying with the requirement. The continuing education hours will accumulate at the same rate and are required the same as those for licenses which are active. A license which has been revoked for noncompliance with the continuing education requirement shall also be subject to the late renewal fee.
- (6) (c) Reactivation of expired license – No person whose license has expired as a result of failure to comply with the renewal requirements of rule 1200-30-1-.09 may be reinstated without complying with the requirements of this rule. The continuing education hours will accumulate at the same rate and are required the same as those for licenses which are active. A license which has expired as a result of failure to comply with the renewal requirements of rule 1200-30-1-.09 shall also be subject to the late renewal fee.
- (8) (f) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (d) above may be subject to disciplinary action.

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 2nd day of December, 2003. (12-01)

**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., Sections 33-1-302, and 305. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code. Ann., Section 4-5-204, and will take place in the Cumberland Room, Cordell Hull Building, 425 Fifth Avenue, North, Nashville, Tennessee, at 9:00 a.m., central time on the 20th day of February, 2004.

Written comments will be considered if received by close of business, March 20, 2004, at the DMHDD Office of Legal Counsel, 425 Fifth Avenue North, Fifth Floor, Cordell Hull Building, 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: Elaina J. Sychareune, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, 425 Fifth Avenue North, Fifth Floor, Cordell Hull Building, Nashville, Tennessee 37243; telephone (615) 532-6520.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0940-3-9 TREATMENT REVIEW COMMITTEE

TABLE OF CONTENTS

0940-3-9-.01 Application	0940-3-9-.07 Medication Decisions
0940-3-9-.02 Scope	0940-3-9-.08 Obtaining and Releasing Information
0940-3-9-.03 Definitions	0940-3-9-.09 Service Recipients Who Have a Declaration for Mental Health Treatment
0940-3-9-.04 Composition	0940-3-9-.10 Emergencies
0940-3-9-.05 Involvement of Service Recipients and Others	
0940-3-9-.06 Treatment Review Committee Process	

0940-3-9-.01 APPLICATION.

- (1) This chapter applies to all providers of inpatient mental health services, without regard to source or category of licensure, certification or accreditation.

Authority: T.C.A. §§4-4-103, 33-1-305, 33-6-107.

0940-3-9-.02 SCOPE.

- (1) A Treatment Review Committee (TRC) may:
- (a) Make decisions for service recipients who are admitted voluntarily or involuntarily to a hospital or treatment resource which provides inpatient services, and who lack capacity to make informed decisions regarding medication and the procedures associated with the safety and efficacy of medication management, obtaining information, or release of information as determined by the assessment process in the department's rules on capacity to make informed decisions; and
 - (b) Make decisions for service recipients who are committed involuntarily to a hospital or treatment resource which provides inpatient services, and who have capacity to make informed decisions about medication and the procedures associated with the safety and efficacy of medication management but who object to the medication or the procedure.
 - (c) Authorize treatment in a manner contrary to a declaration for mental health treatment for service recipients who are involuntarily committed to an inpatient treatment facility under Title 33.

The authority of the TRC does not extend to a service recipient who is voluntarily admitted and has capacity to make informed decisions.

Authority: T.C.A. §§4-4-103, 33-1-305, 33-3-104, 33-6-107, Title 33, Chapter 6, Part 10, Tenn. Code Ann.

0940-3-9-.03 DEFINITIONS.

- (1) “Business Day” means Monday through Friday, 8:00 a.m. until 4:30 p.m., excluding legal holidays.
- (2) “Conservator” means a person appointed by a court under the conservatorship laws in Title 34, Chapter 3, Tenn. Code Ann., or the Uniform Veterans’ Guardianship Law in Title 34, Chapter 5, Tenn. Code Ann. with authority to make decisions for an adult who lacks capacity to make informed mental health care decisions.
- (3) “Declaration for Mental Health Treatment” means a document authorized by Title 33, Chapter 6, Part 10, Tenn. Code Ann. that allows a person to say how he/she wants to be treated or not be treated when he/she is unable to make informed decisions about his/her mental health treatment.
- (4) “Durable Power of Attorney for Health Care” means a legal document authorized by Title 34, Chapter 6, Part 2, Tenn. Code Ann. that allows the attorney-in-fact to make decisions for a service recipient’s mental health care.
- (5) “Emergency” means:
 - (a) For purposes of administration of medication:
 1. An immediate threat of serious physical harm to the service recipient or to others caused by the violent behavior of the service recipient; or
 2. An immediate threat to the service recipient of deteriorating physical well-being with risk to life or long term health caused by the effects of mental illness or serious emotional disturbance; or
 3. Actual violent behavior by the service recipient causing substantial property damage; or
 4. The need to prevent substantial deterioration of the service recipient’s mental health or to prevent physical harm to the service recipient or to others, or the need is greater than the potential harm to the service recipient; or
 5. An immediate threat to the service recipient of deteriorating physical well-being with risk to life or long term health caused by the effects of a physical illness or condition.
 - (b) For purposes of obtaining information from other treatment agencies: an immediate threat to the service recipient’s physical or mental health if the information is not obtained.
- (6) “Guardian” means a person appointed by a court under Title 34, Chapter 2, Tenn. Code Ann. with authority to make decisions for a person under eighteen (18) years of age who lacks capacity to make informed mental health care decisions.
- (7) “Involuntary Admission” means an admission to an inpatient hospital or treatment resource under Title 33, Chapter 6, Part 4 or 5, Tenn. Code Ann., T.C.A. §§33-3-401, 33-3-402, 33-3-403, 33-3-412, , 33-7-301, 33-7-303, or 37-1-128.
- (8) “Lacks Capacity” means the factual demonstration, as determined by the assessment process in DMHDD rules on capacity to make informed decisions, that the individual is:

- (a) Unable to understand a proposed procedure or treatment identified in the scope of this chapter;
or
 - (b) Unable to understand the risks and benefits of such procedure or treatment; or
 - (c) Unable to understand the risks and benefits of any available alternative(s) to the proposed procedure or treatment.
- (9) “Legal Custodian” means a person or agency appointed by a court under Title 37, Tenn. Code Ann. ~~W~~with authority to make decisions for a service recipient who lacks capacity to make informed mental health care decisions.
- (10) “Nurse Practitioner” means a registered nurse who is certified by the Board of Nursing under T.C.A. §§63-7-123 and 63-7-207(14) and has been issued a certificate of fitness by the Board of Nursing.
- (11) “Physician Assistant” means a person who is licensed as a physician assistant under T.C.A. §63-19-105.
- (12) “Qualified Mental Health Professional” means a person who is licensed in Tennessee, if required for the profession, and is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner; senior psychological examiner; social worker who is certified with two 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.
- (13) “Service Recipient” means a person who is receiving inpatient services for mental illness or serious emotional disturbance.
- (14) “Service Recipient Advocate” means an individual designated to be an advocate for the rights of a service recipient, but who is not a member of the service recipient’s treatment team.
- (15) “Surrogate Decision-maker” means an adult, identified by a physician, a psychologist or a dentist under T.C.A. §§ 33-3-219 and 220, who:
- (a) Knows about a service recipient’s mental retardation, which occurred before age 18, or mental impairment related to a developmental disability, which occurred before age 22, and condition as it relates to the matter in question;
 - (b) Is actively involved in the service recipient’s life;
 - (c) Is willing to make a decision for the service recipient on routine mental health treatment;
 - (d) Appears to be reasonably capable of making such a decision and is likely to make it objectively in the service recipient’s interest;
 - (e) Appears to have no conflict of interest with the service recipient and the service recipient does not object to the surrogate decision-maker in any way; and
 - (f) Is, in order of descending preference for service as a surrogate, the service recipient’s spouse, adult child, parent or stepparent, adult sibling, any other adult relative of the service recipient, or any other adult.

- (16) “Temporary Caregiver” means an individual designated under T.C.A. §34-6-302 to make decisions as specified in §34-6-304 for a minor child as assigned by the parent or parents on the form provided by the Department of Children’s Services for this purpose.
- (17) “Treatment Review Committee (TRC)” means a committee established under T.C.A. §33-6-107 to make decisions for service recipients who receive inpatient services.
- (18) “Voluntary Admission” means an admission to an inpatient hospital or treatment resource under Title 33, Chapter 6, Part 2, Tenn. Code Ann.

Authority: T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-104, 33-3-219 and 220, 33-4-110, 33-6-107, Title 33, Chapter 6, Part 10, Tenn. Code Ann., Title 34, Chapters 2, 3, 5, and Chapter 6, Parts 2 and 3, Tenn. Code Ann., Title 37, Chapter 1, Part 1, Tenn. Code Ann.

0940-3-9-.04 COMPOSITION.

- (1) A Treatment Review Committee (TRC) must have at least four (4) members.
- (2) A TRC includes:
 - (a) A licensed physician (required when a TRC is making decisions on medication), and
 - (b) A service recipient advocate (required for every TRC), and
 - (c) Two (2) or more of the following: a licensed pharmacist, a clinical chaplain, a qualified mental health professional, a licensed RN or licensed physician assistant, and
 - (d) One (1) member with mental health experience with children (required when a TRC is making decisions for service recipients who are children).
- (3) No person who is a member of a service recipient’s treatment team may be a member of the TRC making decisions for the service recipient.
- (4) The service recipient may request a specific person, or an alternate, to serve as the service recipient advocate. Whenever possible, this request must be granted, although the facility may deny the request for good cause, such as if the requested service recipient advocate is not available, doesn’t qualify as a service recipient advocate, or declines the request. The request and the granting or denying of that request must be documented in the service recipient’s record, including the criteria considered and the reason for granting or denying the request.
- (5) If the service recipient does not request a specific person to serve as the service recipient advocate, or if the request for a specific person, or alternate is denied, the facility shall designate an advocate for the service recipient.
- (6) A facility may elect to have multiple TRCs, either for making different types of decisions or for making decisions in various areas of the facility. If multiple TRCs are established, all must meet the composition requirements of 0940-3-9-.04.

Authority: T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-104, 33-6-107.

0940-3-9-.05 INVOLVEMENT OF SERVICE RECIPIENTS AND OTHERS.

- (1) The Treatment Review Committee (TRC) shall encourage service recipients who are sixteen (16) years old or older to participate in the TRC meeting to the fullest extent possible.
- (2) The TRC shall make every effort to obtain the participation of parents, legal custodian, legal guardian, or temporary caregiver in the TRC meeting, if the service recipient is an unemancipated child.
- (3) The service recipient's family members, legal custodian, legal guardian, temporary caregiver, conservator, or attorney-in-fact under a durable power of attorney for health care may attend the TRC meeting.
- (4) For service recipients who also have mental retardation or a mental impairment related to a developmental disability that occurs before age 22, a surrogate decision-maker under T.C.A. §§33-3-219 and 220 may attend the TRC meeting.

Authority: T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-104, 33-3-219 and 220, 33-4-110, 33-6-107, Tenn. Code Ann., Title 34, Chapters 2, 3, 5, and Chapter 6, Parts 2 and 3, Tenn. Code Ann., Title 37, Chapter 1, Part 1.

0940-3-9-.06 TREATMENT REVIEW COMMITTEE PROCESS.

- (1) A TRC meeting may be requested by the service recipient, the service recipient advocate, the attending physician, a member of the service recipient's treatment team, other clinical professionals involved in the service recipient's care, or the service recipient's parent, legal custodian, legal guardian, temporary caregiver, conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker selected under T.C.A. §§33-3-219 and 220. Requests, issues considered, criteria used, and reasons for granting or denying the request must be documented in the service recipient's record.
- (2) If a TRC meeting is requested by a service recipient, the request cannot be denied unless the TRC has met on the same issue for that service recipient within thirty (30) days of the request.
- (3) Upon request, a TRC meeting must be convened as soon as practical, but no later than twenty-four (24) hours for emergency medication issues, including weekends and holidays. For non-emergencies, the TRC must convene no later than three (3) business days.
- (4) When a TRC meeting has been scheduled for a service recipient, all reasonable efforts must be made to notify the following of the time and date of the TRC meeting: parents, legal custodian, legal guardian, or temporary caregiver of a service recipient who is an unemancipated child or the service recipient's conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker selected under T.C.A. §§33-3-219 and 220.
 - (a) Whenever possible, notifications about TRC meetings should be made at least twenty-four (24) hours before the meeting and must include the date, time and location of the meeting.
 - (b) All notifications must be documented in the service recipient's record. If notifications are not made, the reason must be documented in the service recipient's record.
- (5) Before making a decision for a service recipient who lacks capacity to give or withhold informed consent under this chapter, the TRC must:
 - (a) Review the issues to be decided;

- (b) Interview the service recipient, if possible, unless the service recipient declines the opportunity to be interviewed; and
 - (c) Review the service recipient's record, including the documentation of the assessment of capacity to give or withhold informed consent regarding the issue in question.
- (6) All decisions made by a TRC for a service recipient must be documented in the service recipient's record.
 - (7) Decisions made by a TRC must be communicated to the service recipient and to the parents, legal custodian, legal guardian, or temporary caregiver of a service recipient who is an unemancipated child; a conservator, surrogate decision-maker or attorney-in-fact under a durable power of attorney for health care of an adult service recipient.
 - (8) The TRC may not override a decision by a parent, legal custodian, legal guardian, or temporary caregiver of a service recipient who is an unemancipated child, or a conservator or attorney-in-fact under a durable power of attorney for health care of an adult service recipient. The TRC may not override a decision by the surrogate decision-maker of a service recipient with mental retardation or mental impairment related to a developmental disability.

Authority: *T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-104, 33-3-219 and 220, 33-4-110, 33-6-107, Title 34, Chapters 2, 3, 5, and Chapter 6, Parts 2 and 3, Tenn. Code Ann., Title 37, Chapter 1, Part 1, Tenn. Code Ann.*

0940-3-9-.07 MEDICATION DECISIONS.

- (1) Adult service recipients who lack capacity to make informed decisions regarding medication and do not have a conservator, an attorney-in-fact under a durable power of attorney for health care, or a surrogate decision-maker.
 - (a) When an adult service recipient lacks capacity to make informed decisions regarding medication, the service recipient may be administered medication when a physician, nurse practitioner, or physician assistant certifies that the medication is a necessary part of the service recipient's treatment and there is no other reasonable alternative.
 - 1. This certification must be made by a physician, nurse practitioner, or physician assistant after a face-to-face evaluation of the service recipient and must be documented in the service recipient's record.
 - 2. The order for medication is valid for up to seventy-two (72) hours. The order may be renewed once for up to an additional seventy-two (72) hours, if the service recipient still lacks capacity to make informed decisions regarding medication. All times include weekends and holidays.
 - 3. After 144 hours, including weekends and holidays, if the service recipient still lacks the capacity to make informed decisions regarding medication, the Treatment Review Committee must decide whether the service recipient should receive medication and, if so, which classes of medication are authorized.
 - (b) TRC authorizations for medication must be time-limited and documented in the service recipient's record.
 - (c) The service recipient's capacity to make informed decisions regarding medication must be reviewed at least every thirty (30) days.

- (d) When the service recipient regains the capacity to make informed decisions regarding medication, the service recipient must be asked to make decisions about medication and the TRC's authorization for medication expires.
 - (e) If the service recipient has not gained capacity to make decisions about medication within ninety (90) days of the assessment that the service recipient lacks capacity, the facility may petition the court or assist others to petition the court to have a conservator appointed. The service recipient may continue to be medicated based on the TRC's authorization until a conservator is appointed only if the petition was filed by the 90th day.
- (2) Adult service recipients who lack capacity and have a conservator, an attorney-in-fact under a durable power of attorney for health care, or a surrogate decision-maker.
- (a) When an adult service recipient lacks capacity to make informed decisions regarding medication and the service recipient has a conservator, an attorney-in-fact under a durable power of attorney for health care, or a surrogate decision-maker, decisions regarding medication must be made by the conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker.
 - (b) If the service recipient's conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker is unavailable, the service recipient may receive medication for no longer than sixty (60) days through the process in 0940-3-9-.07(1) while attempts continue to reach the service recipient's conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker.
 - (c) A TRC may not override a decision by a service recipient's conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker.
- (3) Unemancipated minors who are age 16 or 17 and lack capacity to make informed decisions regarding medication or who are under the age of 16.
- (a) The facility must contact the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker to make an informed decision for the service recipient regarding medication.
 - (b) If the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker is not available, the service recipient may receive medication for no longer than thirty (30) days through the process in 0940-3-9-.07(1) while attempts continue to reach the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker.
 - (c) If the service recipient's parent, legal guardian, temporary caregiver, or surrogate decision-maker is not available within thirty (30) days, the facility must notify the Department of Children's Services (DCS) and request that DCS assume responsibility for the service recipient. The service recipient may continue to be medicated based on the TRC's authorization until DCS assumes responsibility and a legal custodian is appointed to make an informed decision for the service recipient regarding medication.
 - (d) If the service recipient's parent, legal guardian, temporary caregiver, or surrogate decision-maker is available, but does not choose to make an informed decision for the service recipient regarding medication, the service recipient may receive medication through the process in 0940-3-9-.07(1).

- (e) When a service recipient who is age 16 or 17 gains the capacity to make informed decisions regarding medication, the service recipient must be asked to make decisions about medication and the TRC's authorization for medication expires.
 - (f) The TRC may not override a decision by an unemancipated minor's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker.
- (4) Involuntarily committed service recipients 16 years of age and older who have capacity and object.
- (a) If a service recipient who is committed involuntarily under Title 33, Chapter 6, Part 4 or 5, Tenn. Code Ann., T.C.A. §§33-3-401, 33-3-402, 33-3-403, 33-3-412, 33-7-301, 33-7-303, or 37-1-128 has the capacity to make informed decisions for medication, but objects to medication, the service recipient may be given medication only if approved by the TRC.
 - (b) The treating physician, nurse practitioner, or physician assistant must consider the service recipient's objections and must discuss treatment alternatives with the service recipient and attempt to reach agreement with the service recipient before requesting the TRC to approve medication. The justification for requesting the TRC's decision to medicate over the service recipient's objection must be documented in the service recipient's record.
 - (c) The TRC must consider the service recipient's objection to the proposed medication and must review the documentation of the discussion between the service recipient and the treating physician, nurse practitioner, or physician assistant regarding treatment alternatives before making a decision about medication as well as the justification for requesting the TRC's decision to medicate over the service recipient's objection.
 - (d) The TRC may approve medication for no longer than ninety (90) days. If medication is approved, the TRC must specify the classes of medication that are approved.
 - (e) If the service recipient continues to object, at least every ninety (90) days the treating physician, nurse practitioner, or physician assistant must:
 - 1. Consider the service recipient's objection, especially whether there are other alternatives or whether objection is based on lack of reality-based decision-making;
 - (i) If the objection is based on lack of reality-based decision-making, the physician, nurse practitioner, or physician assistant must consider whether the service recipient lacks capacity to make an informed decision regarding medication.
 - (ii) If an assessment under 0940-1-6 indicates that the service recipient lacks capacity to make an informed decision regarding medication, the process in 0940-3-9-.07(1) must be followed.
 - 2. Discuss treatment alternatives with the service recipient;
 - 3. Attempt to reach agreement with the service recipient regarding medication; and
 - 4. Document the discussion in the service recipient's record.
 - (f) If the service recipient continues to object, at least every ninety (90) days the TRC must:

1. Consider the service recipient's objection, especially whether there are other alternatives or whether objection is based on lack of reality-based decision-making;
 - (i) If the objection is based on lack of reality-based decision-making, the physician, nurse practitioner, or physician assistant must consider whether the service recipient lacks capacity to make an informed decision regarding medication.
 - (ii) If an assessment under 0940-1-6 indicates that the service recipient lacks capacity to make an informed decision regarding medication, the process in 0940-3-9-.07(1) must be followed.
2. Consider the recommendations of the treating physician; nurse practitioner, or physician assistant, and
3. Make a decision about medication.

If medication is approved, the TRC must specify the class(es) of medication approved.

- (g) If, after approval of medication by the TRC, the service recipient gives informed consent for the medication, the service recipient must sign an authorization for the medication and the TRC's authorization for medication expires. If the service recipient objects again, then the process under 0940-3-9-.07(4) must be initiated.
- (h) If the service recipient's legal status changes to voluntary, the TRC's authorization for medication expires.

Authority: T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-104, 33-3-219 and 220, 33-4-110, 33-6-107, Title 34, Chapters 2, 3, 5, and Chapter 6, Parts 2 and 3, Tenn. Code Ann., Title 37, Chapter 1, Part 1, Tenn. Code Ann.

0940-3-9-.08 OBTAINING AND RELEASING INFORMATION.

- (1) Adult service recipients who lack capacity to make informed decisions regarding obtaining or releasing information and do not have a conservator, an attorney-in-fact under a durable power of attorney for health care, or a surrogate decision-maker.
 - (a) When an adult service recipient lacks capacity to make informed decisions regarding obtaining from a treatment agency or provider or releasing information to a qualified mental health professional, treatment agency providers, or family members, the TRC must decide whether the information must be requested or released and the specific information that is to be requested or released.
 - (b) TRC authorizations for obtaining or releasing information must be documented in the service recipient's record and must specify the:
 1. Person or agency from whom the information is to be obtained or to whom the information is to be released;
 2. Purpose of the request;
 3. Information to be obtained or released; and

4. Date or condition on which the authorization expires.
 - (c) The service recipient's capacity to make informed decisions regarding obtaining or releasing information must be reviewed at least every thirty (30) days.
 - (d) When the service recipient regains the capacity to make informed decisions regarding obtaining or releasing information, the service recipient must be asked to make decisions about obtaining or releasing information and the TRC's authorization for obtaining or releasing information expires.
 - (e) If the service recipient has not gained capacity to make decisions about obtaining or releasing information within ninety (90) days of the TRC meeting held under this chapter, the facility may petition the court or assist others to petition the court to have a conservator appointed. Information may continue to be obtained or released based on the TRC's authorization until a conservator is appointed only if the petition was filed by the 90th day.
- (2) Adult service recipients who lack capacity and have a conservator, an attorney-in-fact under a durable power of attorney for health care, or a surrogate decision-maker.
 - (a) When an adult service recipient lacks capacity to make informed decisions regarding obtaining or releasing information and the service recipient has a conservator, an attorney-in-fact under a durable power of attorney for health care, or a surrogate decision-maker, decisions regarding obtaining or releasing information must be made by the conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker.
 - (b) If the service recipient's conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker is unavailable, the TRC may authorize obtaining or releasing information for no longer than sixty (60) days through the process in 0940-3-9-.08(1) while attempts continue to reach the conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker.
 - (c) A TRC may not override a decision by a service recipient's conservator, attorney-in-fact under a durable power of attorney for health care, or surrogate decision-maker.
- (3) Unemancipated minors who are age 16 or 17 and lack capacity to make informed decisions regarding obtaining or releasing information or who are under the age of 16.
 - (a) The facility must contact the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker to make an informed decision for the service recipient regarding obtaining or releasing information.
 - (b) If the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker is not available, the TRC may authorize obtaining or releasing information for no longer than thirty (30) days through the process in 0940-3-9-.08(1) while attempts continue to reach the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker.
 - (c) If the service recipient's parent, legal guardian, temporary caregiver, or surrogate decision-maker is not available within thirty (30) days, the facility must notify the Department of Children's Services (DCS) and request that DCS assume responsibility for the service recipient. Information may continue to be obtained or released based on the TRC's authorization until DCS assumes

responsibility and a legal custodian is appointed to make an informed decision for the service recipient regarding obtaining or releasing information.

- (d) If the service recipient's parent, legal guardian, temporary caregiver, or surrogate decision-maker is available, but does not choose to make an informed decision for the service recipient regarding obtaining or releasing information, the TRC may authorize obtaining or releasing information through the process in 0940-3-9-.08(1).
 - (e) When a service recipient age 16 or 17 gains the capacity to make informed decisions regarding obtaining or releasing information, the service recipient must be asked to make decisions about obtaining or releasing information and the TRC's authorization for obtaining or releasing information expires.
 - (f) The TRC may not override a decision by an unemancipated minor's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker.
- (4) The TRC does not have authority to make decisions for service recipients who have capacity to make informed decisions for obtaining or releasing information.

Authority: T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-104, 33-3-219 and 220, 33-4-110, 33-6-107, Title 34, Chapters 2, 3, 5, and Chapter 6, Parts 2 and 3, Tenn. Code Ann., Title 37, Chapter 1, Part 1, Tenn. Code Ann.

0940-3-9-.09 SERVICE RECIPIENTS WHO HAVE A DECLARATION FOR MENTAL HEALTH TREATMENT.

- (1) If a service recipient is involuntarily committed under Title 33, Chapter 6, Part 4 or 5, Tenn. Code Ann., T.C.A. §§ 33-3-401, 33-3-402, 33-3-403, 33-3-412, 33-7-301, or 33-7-303, and the attending physician or other mental health service provider requests authorization to treat in a manner contrary to the service recipient's wishes as expressed in a declaration for mental health treatment, the TRC must meet.
 - (a) The TRC must review the service recipient's declaration for mental health treatment, the request for authorization for treatment in a manner contrary to the declaration for mental health treatment, the rationale for the request, and the specific treatment recommendations. The TRC must document in the service recipient's record its decision and the justification.
 - (b) The TRC may authorize medication in a manner contrary to the service recipient's wishes as expressed in a declaration for mental health treatment for no longer than thirty (30) days.
 - (c) To continue to provide medication contrary to the declaration of mental health treatment, the TRC must convene and authorize the medication at thirty (30) day intervals up to a maximum of 90 days. If the service recipient has not gained the capacity to make informed decisions for medication within ninety (90) days of the TRC meeting held in accordance with this chapter, the facility must:
 - 1. If the service recipient is an adult and has not gained the capacity to make informed decisions for medication within ninety (90) days of the TRC meeting held in accordance with this chapter, the facility may petition the court or assist others to petition the court to have a conservator appointed. The service recipient may continue to be medicated based on the TRC's authorization until a conservator is appointed only if the petition was filed by the 90th day.

2. If the service recipient is an unemancipated minor who is age 16 or 17 and has not gained the capacity to make informed decisions for medication within 30 days, the facility must contact the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker to make an informed decision for the service recipient regarding medication.
 - (i) If the service recipient's parent, legal guardian, temporary caregiver, or surrogate decision-maker is not available, the service recipient may receive medication for no longer than an additional 30 days while attempts continue to reach the service recipient's parent, legal guardian, legal custodian, temporary caregiver, or surrogate decision-maker.
 - (ii) If the service recipient's parent, legal guardian, temporary caregiver, or surrogate decision-maker is not available within sixty (60) days, the facility must notify the Department of Children's Services (DCS) and request that DCS assume responsibility for the service recipient. The service recipient may continue to be medicated based on the TRC's authorization until DCS assumes responsibility and a legal custodian is appointed to make an informed decision for the service recipient regarding medication.
 - (iii) If the service recipient's parent, legal guardian, temporary caregiver, or surrogate decision-maker is available, but does not choose to make an informed decision for the service recipient regarding medication, the service recipient may receive medication based on the TRC's authority.
- (d) When the service recipient gains capacity to make informed decisions, the service recipient must make the decision and the authority of the TRC expires.
 1. The service recipient may be medicated only in compliance with this chapter if the service recipient has capacity and objects to medication.

Authority: T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-219 and 220, 33-4-110, 33-6-107, Title 33, Chapter 6, Part 10, Tenn. Code Ann., Title 34, Chapters 2, 3, 5, and Chapter 6, Parts 2 and 3, Tenn. Code Ann., Title 37, Chapter 1, Part 1, Tenn. Code Ann.

0940-3-9-.10 EMERGENCIES.

- (1) Medication:
 - (a) Without regard to whether the service recipient has or lacks capacity to make informed decisions about medication, in an emergency, medication may be administered to the service recipient without informed consent or Treatment Review Committee (TRC) approval for no longer than twenty-four (24) hours.
 - (b) If the emergency continues beyond twenty-four (24) hours, the emergency order for medication may be extended for an additional twelve (12) hours, but only after a face-to-face assessment of the service recipient by a physician, nurse practitioner, or physician assistant.
 - (c) After 36 hours, the service recipient cannot be medicated without the approval of the TRC, the parent, legal custodian, legal guardian, or temporary caregiver of a service recipient who is an unemancipated child, or the adult service recipient's conservator, or an attorney-in-fact under a durable power of attorney for health care. If a service recipient has mental retardation or mental

impairment related to a developmental disability, a surrogate decision-maker selected under T.C.A. §§33-3-219 and 220 may give approval for the medication.

(2) Information:

- (a) In an emergency, information may be requested or disclosed from a treatment agency without the informed consent of the service recipient and without the authorization of a TRC.

Authority: T.C.A. §§4-4-103, 33-1-101, 33-1-305, 33-3-104, 33-3-219 and 220, 33-4-110, 33-6-107, Title 34, Chapters 2, 3, 5, and Chapter 6, Parts 2 and 3, Tenn. Code Ann., Title 37, Chapter 1, Part 1, Tenn. Code Ann.

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of December, 2003. (12-26)

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

CHAPTER 0940-5-36

MINIMUM PROGRAM REQUIREMENTS FOR PERSONAL SUPPORT SERVICES AGENCIES

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., Section 33-1-302, 305, and 307. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., Section 4-5-204, and will take place in the Magnolia Room on the ground floor of the Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee, at 10:00 a.m. on Thursday, February 5, 2004.

Written comments will be considered if received by close of business, March 6, 2004, at the DMHDD Office of Legal Counsel, 5th Floor, Cordell 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: Elaina J. Sychareune, Office of Legal Counsel, Tennessee Department of Mental Health and Developmental Disabilities, 5th Floor, Cordell Hull Building 425 Fifth Avenue North, Nashville, Tennessee 37243; telephone (615) 532-6520.

TABLE OF CONTENTS

0940-5-36-.01	Definitions	0940-5-36-.05	Personnel Requirements
0940-5-36-.02	Application	0940-5-36-.06	Standardized Training and Continuing Education Requirements
0940-5-36-.03	Scope	0940-5-36-.07	Service Recipient Record Requirements
0940-5-36-.04	Policies and Procedures		

0940-5-36-.01 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.

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

0940-5-36-.02 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; 33-2-404; and §§ 33-2-301 and 302

0940-5-36-.03 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.

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

0940-5-36-.04 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.

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*

0940-5-36-.05 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.

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

0940-5-36-.06 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.

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

0940-5-36-.07 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

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of December, 2003. (12-25)

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 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 1st day of March, 2004.

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-.01, Definitions, is amended by adding the following language as new, appropriately numbered, paragraphs:

- () House Call – A scheduled visit for the purpose of providing veterinary services to an individual client outside of a veterinary facility at the client’s residence, business, or property. A veterinarian who conducts a house call shall have a permanent base of operations with a published address and telephone facilities for making appointments or responding to emergency situations;
- () Public Rabies Vaccination Clinic - A clinic sponsored by a local health department to provide vaccination of dogs and cats against rabies, pursuant to the local health department’s established ordinances and regulations.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-103, 63-12-106, 63-12-139, and 68-8-103.

Rule 1730-1-.13, Unprofessional Conduct, is amended by adding the following language as new paragraph (12) and renumbering the remaining paragraphs accordingly.

- (12) Practicing veterinary medicine in a setting not specifically authorized or designated by T.C.A. § 63-12-103 or rule 1730-1-.01.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-103, 63-12-106, 63-12-112, 63-12-119, 63-12-124, 63-12-137, 63-12-139, and 63-12-140.

Rule 1730-2-.01, Definitions, is amended by adding the following language as new, appropriately numbered, paragraphs:

- () House Call - A scheduled visit for the purpose of providing veterinary services to an individual client outside of a veterinary facility at the client’s residence, business, or property. A veterinarian who conducts a house call shall have a permanent base of operations with a published address and telephone facilities for making appointments or responding to emergency situations;
- () Public Rabies Vaccination Clinic - A clinic sponsored by a local health department to provide vaccination of dogs and cats against rabies, pursuant to the local health department’s established ordinances and regulations.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-103, 63-12-106, 63-12-139, and 68-8-103.

Rule 1730-2-.07, Mobile Facility / Satellite Veterinary Clinics / Emergency Hospitals / House Calls, is amended by deleting paragraphs (5), (6), (7), and (8) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (5), (6), (7), and (8) shall read:

- (5) This does not preclude veterinarians from offering emergency services on an “on call” basis, nor does this preclude veterinarians from participating in the operation of public rabies vaccination clinics. Only public rabies vaccination clinics and mobile facilities may provide veterinary services in scheduled visits to multiple clients at transitory locations.
- (6) Any practitioner who provides veterinary services on a house-call basis and does not maintain a veterinary facility for the receipt of patients shall not be required to secure a premises permit, but must provide for appropriate equipment and facilities.

- (7) Any practitioner who provides veterinary services solely to agricultural animals and does not maintain a veterinary facility for the receipt of patients shall not be required to obtain a premises permit, but must provide for appropriate equipment and facilities.
- (8) Mobile large and small animal veterinary facilities operating in more than one (1) location and examining and/or treating animals belonging to multiple clients whose animals are not permanently housed or boarded at that location(s) shall have a premises permit for the mobile facilities that are utilized. Such mobile facilities shall also specify the locations at which such mobile facilities will operate. Such information shall be considered as part of the application for a premises permit. Any change in the locations at which the mobile facilities will operate shall be reported to the board at least thirty (30) days in advance of the effective date of the change.

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

Rule 1730-2-.13, Unprofessional Conduct of a Premises Owner and/or Veterinarian, is amended by adding the following language as new paragraph (12) and renumbering the remaining paragraphs accordingly.

- (12) Practicing veterinary medicine in a setting not specifically authorized or designated by T.C.A. § 63-12-103 or rule 1730-2-.01.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-103, 63-12-106, 63-12-112, 63-12-119, 63-12-124, 63-12-137, 63-12-139, and 63-12-140.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12 day of December, 2003. (12-13)

blank

pg. 100

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 03-18 REGULATING SPRING WILD TURKEY HUNTING SEASONS AND BAG LIMITS

Pursuant to the authority granted by Tennessee Codes Annotated Sections 70-4-107 and 70-5-108, the Tennessee Wildlife Resources Commission hereby proclaims the following spring hunting seasons and bag limits for wild turkey hunting effective March 1, 2004.

SECTION I. GENERAL REGULATIONS

A. Prohibited Acts

Use of electronic calls or live decoys. Possession of agricultural grain on one's person while turkey hunting. The use of any type of food to feed or attract wild turkeys on WMAs. Shooting or stalking turkeys from a boat in Shelby, Dyer, Tipton, Lauderdale, Haywood or Obion counties. Calling or attempting to call wild turkeys using any call to mimic the sounds made by a wild turkey is prohibited from March 1st to the opening day of the spring turkey hunts on all WMAs.

A licensed turkey hunter, who has filled his bag limit or does not possess a valid permit for a quota hunt, may accompany another turkey hunter (except on WMAs where prohibited) and assist him in calling, but may not have a gun or bow in his possession.

B. Bag and Possession Limits *

Statewide - One bearded turkey per day, not to exceed three per season,
(Includes turkeys taken on WMAs listed in Section III. D. below)

Wildlife Management Areas and Refuges (Except those WMAs listed in Section III. D)
One bearded turkey per hunt not to exceed two per season.

- * The total bag and possession limit shall not exceed four bearded turkeys per season on the statewide season and WMAs combined. Turkeys taken on Ft. Campbell, Chickasaw NWR, Lower Hatchie NWR, Reelfoot NWR and youth-only hunts are bonus birds and do not count toward the total season bag and possession limit.

C. Shooting Hours - Thirty (30) minutes before sunrise to sunset

- D. Checking Stations - All hunters must check in at the area checking station prior to hunting on AEDC, John Tully, Catoosa, Cheatham, Chuck Swan, Laurel Hill, LBL, Natchez Trace, Prentice Cooper, Reelfoot and Shelby Forest WMAs. Hunters are also required to check out at the conclusion of their hunt. All turkeys harvested on the statewide hunt or on WMAs must be taken by the most reasonably direct route to the

nearest county or WMA check station on the day harvested. The permanent kill tag required for the legal possession will be issued at the checking station.

SECTION II. STATEWIDE TURKEY HUNTING SEASONS AND BAG LIMITS

(Exclusive of WMAs and Refuges unless listed in Section III.D below)

- A. Statewide Turkey Season Dates – April 3 through May 11, 2004
- B. Statewide Youth - Only Hunt (ages 10 through 16) - May 15, 2004
Each youth must be accompanied by a non-hunting adult who is not required to have a license. Bag limit - one bearded bird

SECTION III. WILDLIFE MANAGEMENT AREAS - SEASONS AND MISCELLANEOUS REGULATIONS

- A. Regular Managed Hunts (No Hunter Quota)-Bag Limit - One bearded turkey per hunt not to exceed two turkeys per spring season. (See Section I.B.)

AEDC	Four hunts: April 3-5, 9-11, 16-18, April 30 – May 2. (TNG training area is closed during the April 9-11 hunt)
Catoosa	Six 3-day hunts: April 9-11, 16-18, 20-22, 27-29, April 30 May 2, May 4-6. One 2-day Youth-only hunt: April 24-25
Cheatham	Four hunts: April 3-5, 9-11, 21-25, 29-May 2 One 1-day youth hunt: April 17
Ernest Rice	One 1-day Youth-only hunt: May 15.
Fall Creek Falls	Two hunts: April 10-14, 15-18 (Archery Only).
John Tully	Two 3-day hunts: April 9-11, 23-25 One 1-day youth hunt: May 15
Kyker Bottoms	Young Sportsman (ages 10-16): Same as Statewide Season Each youth must be accompanied by an adult who may also hunt.
Laurel Hill	Four hunts: April 3-5, 9-11, 17-20, 22-25.
LBL	Two 7-day hunts: April 19-25, April 26-May 2. Hunters harvesting a turkey on a LBL quota hunt (Sect. III.B) may not hunt on the April 19-25 hunt.
Moss Island	One 1-day Youth-only hunt: May 15.
Natchez Trace	One 4-day hunt: April 22-25.

North Chickamauga (Natural Area Unit Only)	Open with Statewide season except no hunting on Saturday or Creek Sunday. Hunting ends at noon each day.
Prentice Cooper	Six 3-day hunts: April 6-8, 9-11, 13-15, 22-24, 27-29, April 30-May 2.
Shelby Forest	One 1-day Youth-only hunt: May 15.
Williamsport	Two 3-day hunts: April 3-5, 16-18.
Wolf River	One 1-day Youth-only hunt: May 15.
B. Quota Managed Hunts (Quota turkey permit required)-Bag Limit-One bearded turkey per hunt not to exceed two per spring season (See Sect. I.B.)	
Chuck Swan	Six 3-day hunts: April 3-5,, 8-10, 15-17, 22-24, April 29-May 1, May 6-8. (125 hunter quota per hunt). Hunting ends at noon each day, hunters must be at check station by 1 p.m.
Ernest Rice	One 2-day hunt: April 17-18. (30 hunter quota)
LBL	Two 2-day hunts: April 13-14, 17-18 (350 quota per hunt) One 2-day Youth-only hunt: April 10-11 (300 hunter quota)
Moss Island	One 2-day hunt: April 17-18. (30 hunter quota)
Natchez Trace	Three 3-day hunts: April 9-10, 16-18, 23-25. 96 hunter quota per hunt (48 south of I-40 only and 48 north of I-40 only). Hunters must sign in and out each day they hunt.
Oak Ridge	Two 2-day hunts: April 3-4, 17-18. (125 hunter quota per hunt). Hunting ends at 2 p.m. daily, successful hunters must be at check station by 3 p.m. Scouting date for permit holders only March 20 (6 a.m. to 2 p.m.) Hunts subject to cancellation for National security. Hunting area may be reduced.
Reelfoot WMA and Black Bayou Refuge	One 3-day hunt: April 16-18 (20 Hunter quota)
Shelby Forest and Eagle Lake Refuge	Three 1-day hunts: April 10, 17, 24 (50 hunter quota per hunts)
Wolf River	Two 3-day hunts: April 2-4 (25 hunter quota) and April 16-18 (30 hunter quota). Hunting ends at noon each day and successful hunters must check birds at Wolf River Check Station by 1pm
Yuchi Refuge (at Smith Bend)	Five three-day hunts: April 9-11, 16-18, 23-25, 27-29, May 4-6 (10 hunter quota per hunt). Hunting ends at Noon EST. Walk-in Only. No Access by Boat.

C. Special Managed Hunts (No Hunter Quota)

Cordell Hull (Wheel Chair Bound Only Hunting Zone*)	April 3-May 11. Wheel chair bound hunters only Bag Limit – two turkeys either-sex per season
South Cherokee** and Foothills	April 3- May 11 (Non-quota permit required) Bag limit - one bearded turkey per day not to exceed 2 per season. Turkey counts in WMA bag limit. May 15, 2003 - Youth-only (age 10 through 16) hunt to coincide with the statewide youth hunt. Bag limit is one bearded bird and counts as a statewide bird.

* Wheel Chair Only Hunting Zone – That portion of Cordell Hull WMA known as the Old Roaring River Campground (as posted)

** South Cherokee – portions of Cherokee Forest WMA south of Great Smoky Mountains National Park

D. Wildlife Management Areas and Refuges Open With Statewide Seasons and Bag Limits:

Alpine Mountain, Bark Camp Barrens, Barkley (Units I and II), Bean Switch Refuge, Big Sandy, (including Gin Creek), Bridgestone/Firestone, Buffalo Springs, Camden (Units I and II), Cedar Hill Swamp, Chickamauga, Chickasaw, Cheatham Lake, Cold Creek Refuge, Cordell Hull, Cordell Hull Refuge, Cove Creek, Cove Mountain, Cumberland Springs, Cypress Pond Refuge, Doe Mtn, Eagle Creek, Edgar Evins State Park, Flintville Hatchery, Gooch, Harmon's Creek, Haynes Bottom, Henderson Island, Hickory Flats, Hop-in Refuge, Horns Bluff Refuge, Jarrell Switch, Jackson Swamp, Keyes-Harrison, Lick Creek, Lick Creek Bottoms, Long Pond, Maness Swamp Refuge, MTSU, Mt. Roosevelt, New Hope, Nolichucky, Normandy, Obion River, Old Hickory (including Lock 5 Refuge), Pea Ridge, Percy Priest Unit I (archery only) and Unit II, Pickett, Rankin, Royal Blue, Standing Stone, Sundquist, West Sandy, Tellico Lake (except McGhee-Carson and Niles Ferry Units), Tigrett, Watts Bar, White Lake Refuge, White Oak, Yanalhi and portions of the Cherokee Forest WMA north of the Great Smoky Mtns. National Park are open to coincide with the statewide seasons and bag limits.

SECTION IV. NATIONAL WILDLIFE REFUGE HUNTS - Federal Permit required Bag Limit – One bearded turkey per season (counts as a bonus bird unless otherwise noted).

Chickasaw NWR	Three 5-day hunts: April 7-11, 14-18, 21-25 (50 hunter quota per hunt)
Lower Hatchie NWR	Three 5-day hunts: April 7-11, 14-18, 21-25 (25 hunter quota per hunt)
Upper Hatchie NWR	Same as statewide (counts in statewide bag)
Tennessee NWR and Cross Creeks NWR	April 3 – May 11 (counts in statewide bag) May 15th - a Youth-only (age 10 through 16) hunt to coincide with the statewide youth hunt and bag limit.
Reelfoot NWR	One three-day hunt April 9-11.

Hunter quota: Grassy Lake - 25, Long Point - 25.

SECTION IV. REPEAL OF PRIOR PROCLAMATIONS

This proclamation repeals Proclamation 02-17 dated October 31, 2002.

Proclamation no. 03-18 received and recorded this 9th day of December, 2003. (12-11)

blank

pg. 106



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 December 1, 2003 and ending December 31, 2003.


RILEY C. DARNELL
Secretary of State

BLANK

pg. 108

CHANGE OF ADDRESS

If your address has changed, please supply the following information immediately:

- official compilation - Rules and Regulations of the State of Tennessee*
- Tennessee Administrative Register*

Former Address

name of firm or organization

street or box number and street or rural route

city

state

zip code

New Address

name of firm or organization

()

name of person to receive publication

telephone number

street or box number and street or rural route

city

state

zip code

Mail This Form To:

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



BLANK

pg. 110