

TAAAR



March 15, 2004
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RILEY C. DARNELL
Secretary of State

Division of Publications
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Department of State, Authorization No. 305197, 241 copies, March 2004. This public document was promulgated at a cost of \$ 3.05 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.

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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 - 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 April 2004 is 8.92 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 4.92 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

THE HOUSE AND SENATE GOVERNMENT OPERATIONS COMMITTEE**TENNESSEE BOARD OF REGENTS - 0240
STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE**

Please be advised that pursuant to Tennessee Code Annotated, Section 4-5-215(b), the House and Senate Government Operations Committees voted to stay for sixty (60) days the effectiveness of the following rules:

Tennessee Board of Regents
State University and Community College System of Tennessee

Tennessee Technological University
Student Housing Rules
Proposed Amendments to Rule 0240-4-6-.04(1) – (6)

The proposed amendments to Rule 0240-4-6-.04(1) – (6) were filed in the Office of Secretary of State on October 8, 2003 and were to become effective February 27, 2004.

The stay will begin the day this notice is received by your office.

Fred Standbrook
Legislative Attorney

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 previous month. 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

SEQ NO	FILE DATE	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
02-04	Feb 4, 2004	0400 Environment and Conservation Division of Solid Waste Management	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-7 Solid Waste Processing and Disposal</i> 1200-1-7-.07 Fee System for Non-Hazardous and Certain Non-Hazardous Processors of Solid Waste	Glenn Birdwell Solid Waste Management L & C Twr 5th Fl 401 Church St Nashville TN 37243 (615) 253-6689	April 19, 2004
02-14	Feb 23, 2004	1360 State Administrative Procedures Division	Public Necessity Rules	Amendment	1360-4-1-.06 Service of Notice of Hearing	Charles C. Sullivan II Dept of State APD 8th Fl TN Twr 312 8th Ave N Nashville TN 37243-0310 (615) 741-7008	February 23, 2004 through
02-15	Feb 23, 2004	1360 State Administrative Procedures Division	Proposed Rules	Amendment	1360-4-1-.06 Service of Notice of Hearing	Charles C. Sullivan II Dept of State APD 8th Fl TN Twr 312 8th Ave N Nashville TN 37243-0310 (615) 741-7008	June 28, 2004
02-17	Feb 25, 2004	1660 Wildlife Resources	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels</i>	Sheryl Holtam, Attorney TWRA P. O. Box 40747 Nashville TN 37204 (615) 781-6606	May 10, 2004
02-18	Feb 26, 2004	0240 Board of Regents GOC	Stay of effective Date of Rules		0240-4-6-.04 (1)-(6)		New effective Date: April 26, 2004
02-19	Feb 27, 2004	1660 Wildlife Resources Agency	Rulemaking Hearing Rules		<i>Chapter 1660-1-14 Rules And Regulations For Refuges, Wildlife Management Areas, And Public Hunting Areas</i> 1660-1-14-.03 Catoosa, Cheatham, Chuck Swan, Forks of the	Sheryl Holtam, Attorney TWRA P. O. Box 40747 Nashville TN 37204 (615) 781-6606	May 12, 2004

SEQ NO	FILE DATE	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
02-19, cont.					River, Laurel Hill, Pennington and Pennington Cooper Wildlife Management Areas		
02-22	Feb 27, 2004	0500 TN Registry Of Election Finance	Proposed Rules	New Rules	Chapter 0530-1-3 Campaign Finance 0530-1-3-.08 Use of a Conduit 0530-1-3-.09 Administrative Termination of a Multicandidate Committee's Registration	Drew Rawlins Executive Director 404 Robertson Pkwy Suite 1614 Nashville TN 37243-1360 (615) 741-7959	June 28, 2004
02-24	Feb 27, 2004	1240 Human Services Family Assistance Division	Rulemaking Hearing Rules	Amendments	Chapter 1240-1-2 Family Assistance Unit Food Stamp Program 1240-1-2-.02 Household Concept Food Stamps Only+ Chapter 1240-1-3 Non-Financial Eligibility Requirements 1240-1-3-.43 Food Stamp Program Work Requirements Chapter 1240-1-4 Financial Eligibility Requirements 1240-1-4-.27 Standard Of Need/Income	Phyllis A. Simpson Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248 (615) 313-2266	May 12, 2004

HEALTH SERVICES AND DEVELOPMENT AGENCY

NOTICE OF BEGINNING OF REVIEW CYCLE

Applications will be heard at the April 28, 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 February 1, 2004. 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
Brentwood Community Hospital 7015 Concord Road Brentwood (Williamson), TN 37027 CN0311-103 Contact Person: Sean L. Keyser, Vice President Phone No. 615-312-4000	The establishment of a forty (40) bed community hospital with twenty-four (24) medical inpatient beds, twelve (12) surgical inpatient beds and four (4) critical care beds. This project includes the acquisition of magnetic resonance imaging (MRI) and cardiac catheterization laboratory equipment and the initiation of MRI scanning and cardiac catheterization services. \$42,673,850.00
Hospice of Chattanooga 4355 Highway 58, Suite 101 Chattanooga (Hamilton), TN 37416 CN0312-107 Contact Person: Sheila E. Harris, Business Development Director Phone No. 423-553-1840	The establishment of a home health agency and the initiation of home health services limited to consultative disease management program services for residents currently served by Hospice of Chattanooga in the following counties: Hamilton, Grundy, Sequatchie, Marion, Rhea and Meigs. The parent office will be located in approximately 501 square feet of existing office space at 4355 Highway 58, Suite 101, Chattanooga (Hamilton County), Tennessee. \$53,044.00

NAME AND ADDRESS	DESCRIPTION
<p>Laughlin Memorial Hospital, Inc. 1420 Tusculum Blvd. Greeneville (Greene), TN 37745 CN0401-001 Contact Person: Charles H. Whitfield, CEO Phone No. 423-787-5021</p>	<p>The construction of an addition to Laughlin Memorial Hospital for an outpatient diagnostic imaging center and the expansion of the existing surgical suites. Existing diagnostic services will be relocated to the proposed addition. The existing surgical suites will be expanded to facilitate additional support space, three (3) operating rooms, and the initiation of diagnostic cardiac services. \$18,652,975.00</p>
<p>Volunteer Hospice 713 Hwy. 99 Waynesboro (Wayne), TN CN0401-002 Contact Person: Charlie Burchell, Administrator Phone No. 256-764-5579</p>	<p>The establishment of a home care organization limited to hospice services in the counties of Wayne, Hardin and Lawrence. The parent office will be located at 713 Hwy. 99 in Waynesboro (Wayne County), Tennessee. \$155,000.00</p>
<p>Jefferson Memorial Hospital, Inc. 110 Hospital Drive Jefferson City (Jefferson), TN 37760 CN0401-003 Contact Person: Jeremy H. Biggs, Assistant Vice President Phone No. 865-545-7959</p>	<p>The initiation of mobile cardiac catheterization services for three (3) days per week at the hospital. \$945,000.00</p>
<p>Saint Mary's Medical Center of Campbell County, Inc. 923 East Central Avenue LaFollette (Campbell), TN 37766 CN0401-004 Contact Person: Jeremy H. Biggs, Assistant Vice President Phone No. 865-545-7959</p>	<p>The initiation of mobile cardiac catheterization services for two (2) days per week at the hospital. This FDA approved unit will be leased and operated under licensure of St. Mary's Health System. \$630,000.00</p>
<p>Athens Regional PET Imaging Center 1114 West Madison Avenue, NW Athens (McMinn), TN 37371 CN0401-005 Contact Person: John Wellborn, Consultant Phone No. 615-665-2022</p>	<p>The initiation of a combination mobile positron emission tomography (PET)/computerized tomography (CT) service for one day per week under the licensure and on the campus of Athens Regional Medical Center. \$547,721.00</p>
<p>University of Tennessee Memorial Hospital 1924 Alcoa Highway Knoxville (Knox), TN 37920 CN0401-007 Contact Person: Jerry W. Taylor, Esq. Phone No.: 615-726-1200</p>	<p>The acquisition of a cyberknife stereotactic radiosurgery system. The equipment will be located in the Radiation Oncology Department at UTMC in Knoxville (Knox County), Tennessee and will operate under the hospital's licensure. \$4,761,800.00</p>

NAME AND ADDRESS

DESCRIPTION

Southeastern Neurological Physicians, PLLC
1320 Old Weisgarber Road
Knoxville (Knox), TN 37909
CN0401-008
Contact Person: E. Graham Baker, Esq.
Phone No. 615-383-3332

The establishment of a freestanding outpatient diagnostic center (ODC), the acquisition of magnetic resonance imaging (MRI) and computerized tomography (CT) scanners and the initiation of MRI services. The ODC will be developed in 7,856 SF of existing space.
\$7,674,038.00

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EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0940 - Department of Mental Health and Health Developmental Disabilities - Office of Licensure - Emergency licensure rules covering personal support services agencies, chapter 0940-5-36 Personal Support Services, 1 T.A.R. (January 2004) - Filed December 9, 2003; effective through May 22, 2004. (12-12)

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PROPOSED RULES

THE TENNESSEE REGISTRY OF ELECTION FINANCE - 0530

CHAPTER 0530-1-3 CAMPAIGN FINANCE RULES

Presented herein are proposed rules of the Registry of Election Finance submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Registry of Election Finance to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in Suite 1614 of the Parkway Towers Building located at 404 James Robertson Parkway, Nashville, TN 37243-1360, and in the Department of State, Eighth Floor, William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rules, contact: Drew Rawlins, 404 James Robertson Parkway, Suite 1614, Nashville, TN 37243-1360, Registry of Election Finance, (615) 741-7959.

The text of the proposed rules is as follows:

NEW RULES

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0530-1-3-.08	Use of a Conduit
0530-1-3-.09	Administrative Termination of a Multicandidate Committee's Registration

0530-1-3-.08 USE OF A CONDUIT.

- (1) In determining whether a person(s) is using directly or indirectly a committee, group or other organization as a conduit or intermediary to make a campaign contribution in violation of T.C.A. § 2-10-303(3), the Registry of Election Finance, in its discretion, may consider any or all of the following factors. The Registry is not limited to these factors, however, and any additional relevant information may be received and considered as to whether a contribution was made directly or indirectly using a conduit or intermediary in violation of T.C.A. § 2-10-303(3).
 - (a) Contributions
 1. All contribution(s) received by the committee or organization came from a single source.
 2. The percentage of contributions received by the committee or organization from a single source.

3. The number of contributors to the committee or organization.
 4. Whether an individual contributor, who has reached the individual limit on contributions to a particular candidate, has made a contribution(s) to a committee or organization, that, within a ninety (90) day period of receiving such contribution(s), makes an expenditure to the same candidate.
 5. The contribution history of the contributor to the committee or organization.
 6. The relationship between the contributor(s) to the committee or organization and the officials of the committee or organization.
 7. The affiliations, relationships or connections between the committee or organization and other committees and organizations.
- (b) Expenditures
1. The percentage of available funds given by the committee or organization to a single candidate.
 2. The number of expenditures made by the committee or organization to candidates.
 3. The history of the committee or organization in making expenditures.
 4. Whether multiple expenditures were made to a single candidate in an election cycle.
- (c) Timing
1. The time frame of contributions received by the committee or organization.
 2. The time frame of expenditures made by the committee or organization.
 3. The length of time the committee or organization has been active.
 4. The timing of the relationship between contributions received by a committee or organization and expenditures made to candidates.
- (2) There shall be a rebuttable presumption that a committee or organization is acting as a conduit or intermediary for purposes of T.C.A. § 2-10-303(3) if:
- (a) the committee or organization has fewer than three (3) contributors;
 - (b) these contributors provide seventy-five percent (75%) or more of the committee's or organization's total contributions within a ninety (90) day period; and
 - (c) seventy-five percent (75%) or more of the committee's or organization's political contribution expenditure(s) are to a single candidate or committee within a ninety (90) day period;

provided, however, that this rebuttable presumption shall not apply to a committee or organization making less than \$7,500 in political contribution expenditures in any given calendar year.

Authority: T.C.A. §§ 2-10-207(1) and 2-10-303(3)

0530-1-3-.09 ADMINISTRATIVE TERMINATION OF A MULTICANDIDATE COMMITTEE'S REGISTRATION.

- (1) The Registry of Election Finance may administratively terminate the registration of a multicandidate committee upon the occurrence of any of the following events:
 - (a) A multicandidate committee fails to file quarterly reports for two (2) straight quarters.
 - (b) The address on file with the Registry of Election Finance for the multicandidate committee is no longer active and no forwarding address is available.
 - (c) The multicandidate committee has been assessed and not paid a civil penalty within ninety (90) days of its becoming final.
- (2) The Registry of Election Finance shall send notice to the address of the multicandidate committee's treasurer on file of the Registry's intent to administratively terminate the committee's registration. To object to the proposed termination the Treasurer or other person authorized to act on behalf of the committee shall respond to the Registry in writing within thirty (30) days of the date of the mailing of this notice. If the Registry receives no response by the end of the thirty (30) day period, the multicandidate committee's registration will be administratively terminated and the committee shall no longer be permitted to avail itself of the higher contribution limits conferred by law on multicandidate committees.
- (3) A multicandidate committee that has been administratively terminated may reinstate its registration by performing all of the following actions, if applicable:
 - (a) filing the reports for the periods that were the basis of the prior termination;
 - (b) paying any and all civil penalties that may have been imposed by the Registry, as well as any accrued interest and other costs, including but not limited to, any court costs;
 - (c) providing the correct current mailing address, street address and telephone number for the chief executive officer and the Treasurer of the multicandidate committee; and
 - (d) performing such other steps as may be reasonably required by the Registry pursuant to the statutes and regulations.

Authority: T.C.A. §§ 2-10-207(1), 2-10-102(9), 2-10-105 and 2-10-110

The proposed rules set out herein were properly filed in the Department of State on the 27th day of February, 2004, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of June, 2004. (02-22)

**THE TENNESSEE DEPARTMENT OF STATE - 1360
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1360-4-1
UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES
BEFORE STATE ADMINISTRATIVE AGENCIES**

Presented herein is a proposed amendment of the Tennessee Department of State, Administrative Procedures Division submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Administrative Procedures Division to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments and repeals are published. Such petition to be effective must be filed in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0001 and the Publications Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Charles C. Sullivan II, Director of Administrative Procedures Division, Tennessee Department of State, Administrative Procedures Division, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0001, (615) 741-7008.

The text of the proposed amendment is as follows:

SUBSTANCE OF PROPOSED AMENDMENT

Rule 1360-4-1-.06 Service of Notice of Hearing, is amended by adding the following language as a new paragraph (4):

- (4) The methods of service authorized and time limits required pursuant to paragraphs (1) through (3) of this rule shall apply only to the initial notice of hearing required to be filed pursuant to rule 1360-4-1-.05 (2) which is intended by the filing agency to memorialize the commencement of a contested case proceeding as described by rule 1360-4-1-.05 (1). All other documents including, but not limited to, supplemented notice pursuant to rule 1360-4-1-.05 (3), and notices of continuances that are ordered or required by statute or rule to be served during the course of the resulting contested case proceeding shall not be required to be served by return receipt mail or its equivalent, or by personal service.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 4-5-301 and 4-5-307.

The proposed rules set out herein were properly filed in the Department of State on the 27th day of February, 2004, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of June, 2004. (02-15)

PUBLIC NECESSITY RULES

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

1640 - TN Student Assistance Corporation - Public necessity rules to ensure the timely and orderly implementation of the lottery scholarship program for the Fall 2004 semester, chapter 1640-1-19, Tennessee Educational Lottery Scholarship Program, 1 T.A.R. (February 2004) - Filed December 29, 2003; effective though June 11, 2004. (12-23)

THE TENNESSEE DEPARTMENT OF STATE - 1360 ADMINISTRATIVE PROCEDURES DIVISION

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Rule 1360-4-1-.06 of the Tennessee Secretary of State's Uniform Rules of Procedure For Hearing Contested Cases Before State Administrative Agencies is clarified in response to the Tennessee Court of Appeals interpretation of the rule requiring all notices of hearings, including notices of continuance, to be served by "personal service, return receipt mail or equivalent carrier with a return receipt." (Kogan v. Bd. of Dentistry, Tn. Ct. of App. at Nashville, No. M2003-00291-COA-R3-CV, effective on or about 3-3-04). Promulgation of a public necessity rule is necessary under TCA § 4-5-209 (a) (2), (3).

The Administrative Procedures Division of the Secretary of State's Office has consistently interpreted this rule as requiring only the original notice of hearing to be served as specified by the rule and has allowed subsequent notices, including notices of continuance, to be delivered by regular mailing through the United States Postal Service. This clarification of the rule does not change the prior, consistent interpretation of the rule by the Administrative Procedures Division.

The interpretation of the rule by the Court will affect all State agencies using this rule for their administrative hearings. The full consequences of the Kogan order cannot be fully assessed considering the myriad of different types of administrative cases that the Order will affect. However, it will cause considerable expense for the Administrative Procedures Division and the affected agencies, and, in conjunction with the rule's requirement that notices be served no later than 30 days prior to the hearing date, could, and probably would, jeopardize not only the federal funds used by the agencies for due process requirements and for the overall administration of their programs, but also the health, safety and welfare of the public in those programs where swift action is necessary to curtail harmful activities by persons or entities regulated by the agencies.

An identical proposed rule has been filed pursuant to TCA §4-5-202 (a) (3), but it will not become effective prior to the Court's Order becoming effective.

For complete copies of the text of the notice, please contact Charles C. Sullivan II, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243-0310, (615) 741-7008.

Riley C. Darnell
Secretary of State

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
CHAPTER 1360—4—1**

AMENDMENT

Rule 1360-4-1-.06 Service of Notice of Hearing, is amended by adding the following language as a new paragraph (4):

- (4) The methods of service authorized and time limits required pursuant to paragraphs (1) through (3) of this rule shall apply only to the initial notice of hearing required to be filed pursuant to rule 1360-4-1-.05 (2) which is intended by the filing agency to memorialize the commencement of a contested case proceeding as described by rule 1360-4-1-.05 (1). All other documents including, but not limited to, supplemented notice pursuant to rule 1360-4-1-.05 (3), and notices of continuances that are ordered or required by statute or rule to be served during the course of the resulting contested case proceeding shall not be required to be served by return receipt mail or its equivalent, or by personal service.

Authority: *T.C.A. § § 4-5-202, 4-5-204, 4-5-301 and 4-5-307.*

The public necessity rules set out herein were properly filed in the Department of State on the 27th day of February, 2004, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the day of 10th day of August, 2004. (02-14)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 23rd day of April, 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 0450-1-.12, Continuing Education, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Acceptable Continuing Education - Acceptable continuing education shall consist of master or doctoral level course work from a nationally or regionally accredited institution of higher education; attendance at educational events sponsored or approved by national, state, regional, or local professional associations in the field; or events related to the practice of the profession for which a nationally or regionally accredited institution of higher education grants CEUs.

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

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

- (2) Acceptable Continuing Education - Acceptable continuing education shall consist of master or doctoral level course work from a nationally or regionally accredited institution of higher education; attendance at educational events sponsored or approved by national, state, regional, or local professional associations in the field; or events related to the practice of the profession for which a nationally or regionally accredited institution of higher education grants CEUs.

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

Rule 0450-3-.12, Continuing Education, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Acceptable Continuing Education - Acceptable continuing education shall consist of master or doctoral level course work from a nationally or regionally accredited institution of higher education; attendance at educational events sponsored or approved by national, state, regional, or local professional associations in the field; or events related to the practice of the profession for which a nationally or regionally accredited institution of higher education grants CEUs.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of February. (02-01)

BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 27th day of April, 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 0460-1-.01, Definitions, is amended by adding the following language as new paragraph (11) and renumbering the remaining paragraphs accordingly:

- (11) Oral and Maxillofacial Radiology – That specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

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

Rule 0460-1-.02, Fees, is amended by deleting subparagraph (1) (d), which is the Specialty Certification Examination Fee, in its entirety and renumbering the remaining subparagraphs accordingly.

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

Rule 0460-1-.05, Continuing Education and C.P.R., is amended by deleting subparagraphs (1) (a) and (1) (b) but not their parts and substituting instead the following language, and is further amended by deleting part (1) (c) 2. in its entirety and renumbering the remaining parts accordingly, and is further amended by deleting subparagraph (5) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a) and (1) (b) but not their parts, and the new subparagraph (5) (c) shall read:

- (1) (a) Beginning January 1, 2003, each licensed dentist must successfully complete forty (40) hours of continuing education in courses approved by the Board during the two (2) calendar years (January 1st of an odd-numbered year through December 31st of the subsequent even-numbered year) that precede the licensure renewal year.
- (1) (b) Beginning January 1, 2003, each licensed dental hygienist must successfully complete thirty (30) hours of continuing education in courses approved by the Board during the two (2) calendar years (January 1st of an odd-numbered year through December 31st of the subsequent even-numbered year) that precede the licensure renewal year.
- (5) (c) A waiver approved by the Board is effective for only the two (2) calendar years (January 1st of an odd-numbered year through December 31st of the subsequent even-numbered year) that precede the licensure renewal year for which the waiver is sought unless otherwise specified in writing by the Board.

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

Rule 0460-2-.06, Specialty Certification, is amended by adding the following language as new subparagraph (1) (c) and renumbering the remaining subparagraphs accordingly, and is further amended by deleting subparagraphs (2) (c), (2) (d), and (2) (e) in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (2) (f) in its entirety, and is further amended by deleting paragraphs (3), (4), (5), (6), (7), (8), (9), (10), (11), and (12) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (13) and (14), so that as amended, the new subparagraphs (1) (c), (2) (c), (2) (d) and (2) (e), and the new paragraphs (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) shall read:

- (1) (c) Oral and Maxillofacial Radiology;
- (2) (c) An applicant shall have a letter sent directly from the secretary of the American Board of the particular specialty for which application is made, to the Board Administrative Office which indicates that the applicant is certified by the American Board in that specialty and that the applicant is in good standing. All such certificates approved by the Board may be accepted as sufficient for specialty certification in lieu of submitting proof of successful completion of a residency program in a specialty. Acceptance of such certificates is discretionary with the Board.
- (2) (d) An applicant shall submit any other documentation required by the Board after review of the application.
- (2) (e) Application review and decisions required by this rule are governed by rule 0460-1-.04.
- (3) Examination - All specialty applicants shall submit to an oral examination even if certification from an American Board in a specialty is accepted in lieu of submitting proof of successful completion of a residency program in a specialty
- (4) Dental Public Health - The requirements for certification in this specialty shall be those required by the American Dental Association as regards its regulation of this specialty branch of dentistry.
- (5) Endodontics - An applicant must submit certification of successful completion of at least two (2) years of postgraduate training in Endodontics at the university level in a program approved by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (6) Oral and Maxillofacial Pathology - An applicant must submit certification of successful completion of two (2) years of postgraduate training in Oral Pathology or Oral and Maxillofacial Pathology at the university level in a program approved by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (7) Oral and Maxillofacial Radiology – An applicant must submit certification of successful completion of graduate study in Oral and Maxillofacial Radiology of at least two (2) years in a school approved or provisionally approved by the Commission on Dental Accreditation of the American Dental Association. Such evidence shall include either a transcript or a notarized certificate of completion letter from the director of the program submitted directly from the school to the Board Administrative Office.
- (8) Oral and Maxillofacial Surgery.

- (a) An applicant must provide to the Board Administrative Office certification of successful completion of advanced study in Oral and Maxillofacial Surgery of four (4) years or more in a graduate school or hospital accredited by the Commission on Dental Accreditation (CODA) or the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative office.

- (b) Oral and Maxillofacial Surgery is the specialty area of the treatment of the oral cavity and maxillofacial area or adjacent or associated structures and their impact on the human body that includes the performance of the following areas of Oral and Maxillofacial Surgery, as described in the most recent version of the Parameters and Pathways: Clinical Practice Guidelines for Oral and Maxillofacial Surgery of the American Association of Oral and Maxillofacial Surgeons:
 - 1. Patient assessment;
 - 2. Anesthesia in outpatient facilities, as provided in T.C.A. §§ 63-5-105 (6) and 63-5-108 (g);
 - 3. Dentoalveolar surgery;
 - 4. Oral and craniomaxillofacial implant surgery;
 - 5. Surgical correction of maxillofacial skeletal deformities;
 - 6. Cleft and craniofacial surgery;
 - 7. Trauma surgery;
 - 8. Temporomandibular joint surgery;
 - 9. Diagnosis and management of pathologic conditions;
 - 10. Reconstructive surgery including the harvesting of extra oral/distal tissues for grafting to the oral and maxillofacial region; and
 - 11. Cosmetic maxillofacial surgery.

- (c) The Tennessee Board of Dentistry determines that the dental practice of Oral and Maxillofacial Surgery includes the following procedures which the Board finds are included in the curricula of dental schools accredited by the American Dental Association, Commission on Dental Accreditation, post-graduate training programs or continuing education courses:
 - 1. Rhinoplasty;
 - 2. Blepharoplasty;
 - 3. Rytidectomy;
 - 4. Submental liposuction;

5. Laser resurfacing;
 6. Browlift, either open or endoscopic technique;
 7. Platysmal muscle plication;
 8. Dermabrasion;
 9. Otoplasty; and
 10. Lip Augmentation.
- (d) Any licensee who lacks the following qualifications and nevertheless performs the procedures and surgery identified in subparagraph (c) shall be subject to discipline by the Board under T.C.A. § 63-5-124, including provisions regarding malpractice, negligence, incompetence or unprofessional conduct:
1. Has successfully completed a residency in Oral and Maxillofacial Surgery accredited by the American Dental Association, Commission on Dental Accreditation (CODA); and
 2. Has successfully completed a clinical fellowship, of at least one (1) continuous year in duration, in esthetic (cosmetic) surgery accredited by the American Association of Oral and Maxillofacial Surgeons or by the American Dental Association Commission on Dental Accreditation; or
 3. Holds privileges issued by a credentialing committee of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to perform these procedures.
- (e) The Board, pursuant to its authority under T.C.A. § 63-5-124, determines that performance of the surgery and procedures identified in subparagraph (c) without the qualifications set out above shall be considered unprofessional conduct and subject to discipline by the Board as such.
- (9) Orthodontics and Dentofacial Orthopedics - An applicant must submit, with the application form, documentation of successful completion of one (1) of the following:
- (a) Certification of successful completion of two (2) academic years of training in Orthodontics and Dentofacial Orthopedics in an approved Postgraduate Department of an accredited dental school, college or university. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
 - (b) Certification of successful completion of an organized preceptorship training program in Orthodontics and Dentofacial Orthopedics approved by the Council on Dental Education of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the preceptorship training program, to be submitted directly from the school to the Board Administrative Office.

- (10) Pediatric Dentistry (Pedodontics) - An applicant must submit to the Board Administrative Office certification of successful completion of at least two (2) years of graduate or post graduate study in Pediatric Dentistry according to the following:
- (a) If such study is completed in whole or in part at a dental school, college or university, the graduate or postgraduate program must be approved by the Council on Dental Education of the American Dental Association.
 - (b) The graduate or postgraduate program need not lead to an advanced degree.
 - (c) The program of study may be pursued in hospitals or clinics or other similar institutions.
 - (d) One (1) academic year of graduate or postgraduate study will be considered as equivalent to one (1) calendar year.
 - (e) Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (11) Periodontics - An applicant must submit certification of successful completion of at least two (2) years of postgraduate training in Periodontics at the university level in a program approved by the Commission on Dental Education of the American Dental Association and by the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (12) Prosthodontics - An applicant must submit certification of successful completion of at least two (2) years of a postdoctoral education in Prosthodontics in a program approved by the Commission on Dental Accreditation of the American Dental Association and the Board. Such evidence shall include, but not be dispositive of this requirement, a notarized certificate of completion furnished by the Board and issued by the director of the program, to be submitted directly from the school to the Board Administrative Office.
- (13) General Rules Governing Specialty Practice
- (a) Scope of Practice - Dentists certified in a specialty branch of dentistry must devote and confine a majority of their practice to the certified specialty only. Any specialty certified dentists who do not so confine their practice or who return to general practice must retire specialty certification on forms obtained from and submitted to the Board Administrative Office.
 - (b) A current and active dental license issued by the Board is a prerequisite to the continued practice under any specialty certification.
- (14) Application review and decisions required by this rule are governed by rule 0460-1-.04.

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

Rule 0460-2-.07, Anesthesia and Sedation, is amended by adding the following language as new subparagraph (5) (c):

- (5) (c) All antianxiety premedications and all sedation techniques (except nitrous oxide and oxygen) used for children age thirteen (13) and under require a comprehensive conscious sedation permit.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-122.

Rule 0460-2-.10, Advertising, is amended by deleting subparagraphs (5) (b) and (5) (d) in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (5) (e), so that as amended, the new subparagraphs (5) (b), (5) (d), and (5) (e) shall read:

- (5) (b) A licensee who possesses a verifiable combination of education and experience is not prohibited from including in his/her practice one or more specialty branches of dentistry. However, any advertisement of such practice shall:
 - 1. Not use the terms specialty, specializing, specialist, practice limited to, or any words which imply that the dentist restricts the practice to procedures which are defined by the Board as within the scope of practice of a specialty branch of dentistry; and
 - 2. Not contain in the name of the practice words or variations of words which could imply specialization unless the dentist holds certification in that specialty issued by the Tennessee Board of Dentistry; and
 - 3. Contain the statement “the services are being performed or provided by a general dentist”, and such statement must appear or be expressed in the advertisement as conspicuously as the branch of dentistry advertised.
- (5) (d) The areas of dentistry that are not recognized as a specialty by the Tennessee Board of Dentistry may not be used in the name of any practice, unless those areas are associated with a recognized specialty enumerated in T.C.A. § 63-5-112, certified by the American Dental Association or the Tennessee Board of Dentistry, and the dentist holds certification in that specialty with the Tennessee Board of Dentistry.
- (5) (e) The term “Board Certified” may not be used in any advertisement unless associated with a recognized specialty enumerated in T.C.A. § 63-5-112, certified by the American Dental Association or the Tennessee Board of Dentistry, and the dentist holds certification in that specialty with the Tennessee Board of Dentistry.

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

NEW RULE

TABLE OF CONTENTS

0460-1-.18 Restraint of Pediatric and Special Needs Patients

0460-1-.18 RESTRAINT OF PEDIATRIC AND SPECIAL NEEDS PATIENTS.

- (1) Purpose – The purpose of this rule is to recognize the unfortunate fact that pediatric and special needs patients may need to be restrained in order to prevent injury and to protect the health and safety of the patients, the dentist, and the dental staff. To achieve this it will be important to build a trusting relationship between the dentist, the dental staff and the patient. This will necessitate that the dentist establishes

communication with the patient and promote a positive attitude towards oral and dental health in order to alleviate fear and anxiety and to deliver quality dental care.

- (2) Training Requirement – Prior to administering restraint, the dentist must have received formal training at a dental school or during an American Dental Association accredited residency program in the methods of restraint described in paragraph (4) of this rule.
- (3) Pre-Restraint Requirements
 - (a) Prior to administering restraint, the dentist shall consider:
 1. The need to diagnose and treat the patient;
 2. The safety of the patient, dentist, and staff;
 3. The failure of other alternate behavioral methods;
 4. The effect on the quality of dental care;
 5. The patient’s emotional development; and
 6. The patient’s physical condition.
 - (b) Prior to administering restraint, the dentist shall obtain written informed consent from the parent or legal guardian and document such consent in the dental record, unless the parent or legal guardian is restraining or immobilizing the patient by use of the method described in subparagraph (4) (b) of this rule.
- (4) Methods of Restraint
 - (a) The Hand-Over-Mouth Exercise (HOME) Method
 1. This method may be used for a healthy child who is able to understand and cooperate but who exhibits defiant, aggressive, or hysterical behavior during dental treatment.
 2. Use of this method shall never obstruct the patient’s airway nor be used:
 - (i) With patients whose age, disability, or emotional immaturity prevent them from being able to understand and/or cooperate;
 - (ii) When patients are under the influence of medications which prevent them from being able to understand and/or cooperate;
 - (iii) When patients have an airway obstruction or when restraint will prevent the patient from breathing; or,
 - (iv) When the parent or legal guardian has not given written informed consent for this method to be utilized.
 - (b) The Physical Restraint or Medical Immobilization Method

1. This method may be used to partially or completely immobilize the patient for required diagnosis and/or treatment if the patient cannot cooperate due to lack of maturity, mental or physical handicap, failure to cooperate after other behavior managements techniques have failed and/or when the safety of the patient, dentist, or dental staff would be at risk without using protective restraint. This method should only be used to reduce or eliminate untoward movement, protect the patient and staff from injury, and to assist in the delivery of quality dental treatment. If restraint or immobilization is deemed necessary, the least restrictive technique shall be used.
2. Use of this method shall not be used:
 - (i) With cooperative patients;
 - (ii) On patients who, due to their medical or systemic condition, cannot be immobilized safely;
 - (iii) As punishment; or,
 - (iv) Solely for the convenience of the dentist and/or dental staff.
- (5) Dental hygienists and dental assistants shall not use the methods described in paragraph (4) by themselves, but may assist the dentist as necessary.
- (6) The patient's record shall include:
 - (a) Written informed consent from parents or legal guardians;
 - (b) Type of method used;
 - (c) Reason for use of that method;
 - (d) Duration of method used; and,
 - (e) If restraint or immobilization is used, type of restraint or immobilization used.
- (7) Parents or legal guardians must be informed of what treatment the patient will receive and why the use of restraints is required.
- (8) Parents or legal guardians may not be denied access to the patient during treatment in the dental office unless the health and safety of the patient, parent or guardian, or dental staff would be at risk. The parent or guardian shall be informed of the reason they are denied access to the patient and both the incident of the denial and the reason for the denial shall be documented in the patient's dental record.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of February, 2004. (02-03)

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

There will be a public hearing before the technical secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the state implementation plan under the authority of Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be distributed to the members of the Tennessee Air Pollution Control Board for their review in regard to the proposed amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 159 Fourth Avenue North, Nashville, at 9:30 a.m. on Monday, April 19, 2004. Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of these comments to be submitted to the hearing officer at the public hearing.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on Monday, April 19, 2004, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to Monday, April 19, 2004, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, Mr. John Rae White, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of these rule changes, you may contact Ms. Vicki Lowe or Mr. John Patton at (615) 532-0554. Copies of documents concerning this matter are available for review at the office of the technical secretary and at certain public depositories. For information about reviewing these documents, please contact Ms. Vicki Lowe or Mr. John Patton, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0554.

SUMMARY OF PROPOSED RULES

The Tennessee Air Pollution Control Regulations are proposed to be amended to expand to additional counties the applicability of stage 1 and 2 gasoline vapor emission control requirements, to require gasoline and diesel vehicles 1975 and newer with gross vehicle weight ratings of 14,000 pounds or less pass emission inspections as a precondition to vehicle registration renewal, to prohibit tampering with motor vehicle emission control systems statewide, and to minimize visible emissions and unnecessary idling of motor vehicles statewide.

This notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of February, 2004. (02-26)

THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF RADIOLOGICAL HEALTH

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments pursuant to T.C.A. 68-202-101 et seq. and 68-202-201 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 17th Floor Conference Room of the L & C Tower located at 401 Church Street, Nashville, Tennessee, at 10:00 a.m. (CST), on the 28th day of April 2004.

Individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be made in person, by writing, telephone or other means and should be made no less than ten (10) days prior to April 28, 2004, or ten (10) days prior to the date such party intends to review such filings, to allow time for the Department to determine how it may reasonably provide such aids or services. Contact the Tennessee Department of Environment and Conservation, John White, ADA Coordinator, L C Annex, Seventh Floor, 401 Church Street, Nashville, TN 37243; (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

AMENDMENTS

Paragraph (64) of Rule 1200-2-5-.32 Definitions is amended by adding the words “ of the whole body” before the word “or” and adding the words “ the skin of” after the word “or”, so that as amended the paragraph shall read:

- (41) *Shallow-dose equivalent* (H_s), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²) averaged over an area of 1 square centimeter.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 68-202-206.

Paragraph (3) and subparagraphs (1)(a) and (b) of Rule 1200-2-5-.50 Occupational Dose Limits for Adults is amended by deleting the paragraph and subparagraphs and substituting the following, so that as amended the paragraph and subparagraphs shall read:

- (1) (a) An annual limit that is the lesser of:
1. A total effective dose equivalent of 5 rems (0.05 Sv) or
 2. The sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye equal to 50 rems (0.5 Sv).
- (b) The annual limits to the lens of the eye, to the skin of the whole body and to the skin of the extremities:
1. A lens-dose equivalent to 15 rems (0.15 Sv), and
 2. A shallow-dose equivalent of 50 rems (0.50 Sv) to the skin of the whole body or to the skin of any extremity.

- (3) The assigned deep-dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 cm² of skin receiving the highest exposure. Deep-dose, lens-dose and shallow-dose equivalents may be assessed from surveys or other radiation measurements to demonstrate compliance with occupational dose limits. However, this may be done only if the individual monitoring device was not subject to the highest potential exposure, or the individual monitoring results are unavailable.

Authority: T.C.A. §§4-5-201 et seq., 68-202-203 and 68-202-206.

Rule 1200-2-10-.08 Types of Licenses is amended by deleting the rule and substituting the following, so that as amended the rule shall read:

- (1) Licenses for radioactive materials are of two types:
- (a) General licenses provided for in this chapter are effective without the filing of applications with the Division or the issuance of licensing documents to particular persons; however, the Division will require reporting of devices covered by the particular general license in accordance with 1200-2-10-.10(2)(c)13.
- (b) Specific licenses are issued to named persons upon applications filed pursuant to this chapter.
- (2) Reserved.

Authority: T.C.A. 68-202-101 et seq.

Paragraph (2) of Rule 1200-2-10-.10 General Licenses¹ – Radioactive Material Other than Source Material is amended by deleting the paragraph and substituting the following, so that as amended the paragraph shall read:

- (2) Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.¹
- (a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business and State or local government agencies to own, acquire, receive, possess, use or transfer, in accordance with the provisions of (b), (c) and (d) of this paragraph, radioactive material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.
- (b) 1. The general license in subparagraph (a) applies only to radioactive material contained in devices that have been manufactured or initially transferred and labeled in accordance with the specifications contained in:
- (i) A specific license issued by the Division pursuant to 1200-2-10-.13(4) or

¹ *Persons possessing radioactive material in devices under the general license in 1200-2-10-.10(2) before October 2, 1978, may continue to possess, use or transfer that material in accordance with the requirements in the 1972 edition of the regulations.*

- (ii) The specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State that authorizes distribution of devices to persons generally licensed by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State.
 - 2. The devices shall have been received from one of the above licensees or through a transfer made under part (2)(c)9.
- (c) Persons who own, acquire, receive possess, use or transfer radioactive material in a device pursuant to the general license contained in subparagraph (2)(a):
- 1. Shall assure that all labels affixed to the device at the time of receipt and bearing the statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by such labels;
 - 2. Shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at such other intervals as are specified in the label; however,
 - (i) Devices containing only krypton need not be tested for leakage of radioactive material, and
 - (ii) Devices containing only tritium or not more than 100 microcuries of other beta and/or gamma emitting material or 10 microcuries of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;
 - 3. Shall assure that the tests required by part (2)(c)2. and other testing, installation, servicing and removal from installation involving the radioactive material, its shielding or containment, are performed:
 - (i) In accordance with the instructions provided by the labels, or
 - (ii) By a person holding an applicable specific license issued by the Division, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to perform such activities.
 - 4. Shall maintain records showing compliance with the requirements of parts (2)(c)2. and (c)3. The records shall show the results of tests. The records also shall show the dates of performance of and the names of persons performing testing, installation, servicing and removal from installation of the radioactive material, its shielding or containment. The licensee shall retain these records as follows:
 - (i) Each record of a test for leakage or radioactive material required by part (2)(c)2. shall be retained for three (3) years after the next required leak test is performed or until the sealed source is transferred or disposed of.
 - (ii) Each record of a test of the on-off mechanism and indicator required by part (2)(c)2. shall be retained for three (3) years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of.

- (ii) Each record that is required by part (2)(b)3. shall be retained for three (3) years from the date of the recorded event or until the sealed source is transferred or disposed of.
5. Shall immediately suspend operation of the device if there is a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie (185 becquerel) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding an applicable specific license issued by the Division, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to repair such devices. The device and any radioactive material from the device may only be disposed of by transfer to a person holding an applicable specific license to receive the radioactive material contained in the device or as otherwise approved by the Division. The licensee shall within 30 days furnish to the Division at the address in Rule 1200-2-4-.07 a report containing a brief description of the event and the remedial action taken. In the case of detection of 0.005 microcurie or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, the licensee shall within 30 days submit to the Division at the address in 1200-2-4-.07 a plan for ensuring that the premises and environs are acceptable for unrestricted use. Under these circumstances, the criteria set out in paragraph 1200-2-10-.36(2), "Radiological criteria for unrestricted use," may be applicable, as determined by the Division on a case-by-case basis.
6. Shall not abandon the device containing radioactive material;
7. Shall not export the device containing radioactive material except in accordance with 10 CFR 110.
8. Shall:
- (i) Transfer or dispose of the device containing radioactive material only by export as provided by part (2)(c)7., by transfer to another general licensee as authorized in part (c)9. of this paragraph, or to a person authorized to receive the device by a specific license issued by the Division under this chapter or an equivalent license issued by the U.S. Nuclear Regulatory Commission or an Agreement State, or as otherwise approved under subpart (2)(c)8.(iii) below.
 - (ii) Shall within 30 days after the transfer of a device to a specific licensee or export furnish a report to the Division. The report shall contain:
 - (I) The identification of the device by manufacturer's (or initial transferor's) name, model number and serial number;
 - (II) The name, address and license number of the person receiving the device (license number not applicable is exported); and
 - (III) The date of the transfer.
 - (iii) Shall obtain written Division approval before transferring the device to any other specific licensee not specifically identified in subpart (2)(c)8.(i).
9. Shall transfer the device to another general licensee only if:

- (i) The device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of this paragraph (2) and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Division:
 - (I) The manufacturer's (or initial transferor's) name;
 - (II) The model number and the serial number of the device transferred;
 - (III) The transferee's name and mailing address for the location of use; and
 - (IV) The name, title and phone number of the responsible individual identified by the transferee in accordance with part (2)(c)12. to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or
 - (ii) The device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;
10. Shall comply with the provisions of 1200-2-5-.140 and 1200-2-5-.141 for reporting radiation incidents, theft or loss of radioactive material.
11. Shall respond to written requests from the Division to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Division at the address in Rule 1200-2-4-.07 providing written justification as to why it cannot comply.
12. Shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.
13. Shall:
- (i) Report these devices to the Division. Reporting shall be done by verifying, correcting and/or adding to the information provided in a request for a report received from the Division. The report information shall be submitted to the Division within 30 days of the date of the request or as otherwise indicated in the request.
 - (iii) In reporting devices, furnish the following information and any other information specifically requested by the Division:
 - (I) Name and mailing address of the general licensee.
 - (II) Information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label).

- (III) Name, title and telephone number of the responsible person designated as a representative of the general licensee under part (b)12.
 - (IV) Address or location at which the device(s) are used and/or stored. For portable devices, the address of the primary place of storage. Each address for a location of use represents a separate general license.
 - (V) Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information.
 - (VI) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.
14. Shall be subject to the bankruptcy notification requirement in paragraph 1200-2-10-.16(7) if holding devices containing radioactive material that meet the following criteria, based on the activity indicated on the label:
- (i) At least 10 mCi (370MBq) of cesium-137,
 - (ii) At least 0.1 mCi (3.7 MBq) of strontium-90,
 - (iii) At least 1 mCi (37 MBq) of cobalt-60, or
 - (iv) At least 1 mCi (37 MBq) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92))
15. Shall report changes to the mailing address for the location of use (including change in name of general licensee) to the Division, at the address in 1200-2-4-.07, within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage.
16. Shall not hold devices that are not in use for longer than two (2) years. If devices with shutters are not being used, the shutter shall be locked in the closed position. The testing required by part (b)2. need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person and have not been tested within the required test interval, they shall be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in storage.
- (d) The general license provided in this paragraph is subject to the provisions of 1200-2-10-.16(1), (2) and (3), 1200-2-10-.23(1), (2) and (3), 1200-2-10-.26 through 1200-2-10-.28 and 1200-2-10-.30.
 - (e) The general license in 1200-2-10-.10(2)(a) does not authorize the manufacture of devices containing radioactive material.

Authority: T.C.A. §68-202-101 et seq.

Paragraph (5) of Rule 1200-2-10-.13 Special Requirements for Issuance of Specific Licenses is amended by deleting the paragraph and substituting the following, so that as amended the paragraph shall read:

- (5) Manufacture, distribution or initial distribution of devices to persons generally licensed under 1200-2-10-.10(2). In addition to the requirements set forth in 1200-2-10-.12, a specific license to distribute certain devices of the types enumerated in 1200-2-10-.10(2) to persons generally licensed under 1200-2-10-.10(2) or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State will be issued only if:
- (a) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide assurance that:
1. The device can be safely operated by persons not having training in radiological protection;
 2. Under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and no person will receive in one year a dose in excess of ten percent (10%) of the limits specified in 1200-2-5-.50; and
 3. Under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the dose to the appropriate organ as specified in Table RHS 7-1;

TABLE RHS 7-1 Part of Body	TABLE OF ORGAN DOSES	
	rem	mSv / Sv
Whole body; head and trunk; active blood forming organs; gonads; or lens of eye	15	150 mSv
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter	200	2 Sv
Other organs	50	500 mSv

- (b) Each device bears a durable, legible clearly visible label or labels approved by the Division that contain(s) in a clearly identified and separate statement:
1. Instructions and precautions for safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);
 2. The requirements, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of

the radioactive material by isotope, quantity of radioactivity and date of determination of the quantity; and

3. The information called for in one of the following statements in the same or similar form:
 - (i) The receipt, possession, use, and transfer of this device, Model _____,⁷ Serial No. _____,² are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or of a State with which the NRC has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION – RADIOACTIVE MATERIAL

(Name of manufacturer or distributor)

- (ii) The receipt, possession, use and transfer of this device Model _____,⁷ Serial No. _____,⁷ are subject to a general license or the equivalent and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION – RADIOACTIVE MATERIAL

(Name of manufacturer or distributor)

- (c) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words “CAUTION – RADIOACTIVE MATERIAL,” and, if practicable, the radiation symbol described in 1200–2–5–.110 and the name of the manufacturer or initial distributor.
- (d) Each device meeting the criteria of 10 CFR 31.5(c)(13)(i) bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, “CAUTION – RADIOACTIVE MATERIAL,” and, if practicable, the radiation symbol described in 1200–2–5–.110.
- (e) In the event the applicant desires that the device be tested at intervals longer than six (6) months, either for proper operation of the on–off mechanism and indicator, if any, or for leakage of radioactive material, or for both, he shall include in his application information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices, and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material or failure of the on–off mechanism indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Division will consider information that includes, but is not limited to:

² If specified elsewhere in labeling affixed to the device, the model, serial number and manufacturer or distributor may be omitted from this label.

1. Primary containment (source capsule);
 2. Protection of primary containment;
 3. Method of sealing containment;
 4. Containment construction materials;
 5. Form of contained radioactive material;
 6. Maximum temperature withstood during prototype tests;
 7. Maximum pressure withstood during prototype tests;
 8. Maximum quantity of contained radioactive material;
 9. Radiotoxicity of contained radioactive material; and
 10. Operating experience with identical devices or similarly designed and constructed devices;
- (f) In the event the applicant desires that the general licensee under 1200-2-10-.10(2) or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, he shall include in his application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities and the basis for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage and use of devices under the general license, will not cause that individual to receive in one year a dose in excess of ten percent (10%) of the limits specified in 1200-2-5-.50;
- (g) Before radioactive material may be transferred in a device for use under a general license, each person licensed under 1200-2-10-.13(5) shall furnish the following information to each person to whom he directly or through an intermediate person transfers radioactive material in a device. In the case of a transfer through an intermediate person, the information shall be provided to the intended user and to the intermediate person prior to initial transfer to the intermediate person.

For use under the general license
contained in 1200-2-10-.10(2)

For use under equivalent regulations of the
U.S. Nuclear Regulatory Commission or an

Agreement State or a Licensing State

1. A copy of the general license
contained in 1200-2-10-.10(2).

A copy of the general license contained in
the U.S. Nuclear Regulatory Commission's,
Agreement State's, or Licensing State's
regulations equivalent to 1200-2-10-.10(2).

Alternatively, he may furnish a copy of the

- .10(2).
10-.10(2)
companied
the device is
Commission,
under requirements
1200-2-10-.10(2);
- If parts 1200-2-10-.10(2)(c)2.
through 4. or 1200-2-10-.10(2)(c)13.
do not apply to the particular device,
those parts may be omitted;
vice, these
2. A copy of 1200-2-10-.26, 1200-2-5-
.140 and 1200-2-5-.141
NRC
3. A list of services that may only be performed by a specific licensee;
4. Information on acceptable disposal options including estimated costs of disposal;
5. A statement that regulatory agencies may issue citations and civil penalties for improper disposal;
6. The name or title, address, and phone number of the person at the appropriate regulatory agency from whom additional information may be obtained;
- (h) An alternative approach to informing customers may be proposed by the licensee for approval by the Division.
- (i) Each device that is transferred after [insert date 1 year after effective date of this rule] shall meet the labeling requirements in subparagraphs 1200-2-10-.13(5)(b), (c) and (d).
- (j) Each person licensed under 1200-2-10-.13(5) to distribute devices to generally licensed persons shall:
1. Report to the Division, at its offices located at the address in Rule 1200-2-4-.07, all transfers of such devices to persons for use under the general license in 1200-2-10-.10(2).
 2. Report to the U.S. Nuclear Regulatory Commission all transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 CFR Part 31.
 3. Report to the responsible Agreement or Licensing State agency all transfers of devices manufactured and distributed pursuant to 1200-2-10-.13(5) for use under a general license in that state's regulations equivalent to 12010-.10(2).
- general license contained in 1200-2-10-
If a copy of the general license in 1200-2-
is furnished to such a person, it shall be ac-
by a note explaining that the use of
regulated by the U.S. Nuclear Regulatory
Agreement State or Licensing State
substantially the same as those in
If paragraphs (c)(2) through (4) or (c)(13),
or sections of the Agreement State or
Licensing State regulations equivalent to these
paragraphs, do not apply to the particular de-
paragraphs may be omitted.
A copy of 10 CFR §§31.2, 30.51, 20.2201,
and 20.2202 or the Agreement State or
Licensing State regulations equivalent to these
regulations

4. Reports required by parts (2)(j)1., 2., and 3. shall identify:
 - (i) Each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use;
 - (ii) The name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;
 - (iii) The date of transfer;
 - (iv) The type, model number and serial number of the device transferred; and
 - (v) The quantity and type of radioactive material contained in the device.
5. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).
6. For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.
7. If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.
8. The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.
9. The report shall clearly identify the specific licensee submitting the report and include the license number of the specific licensee.
10. If no transfers have been made to or from persons generally licensed under 1200-2-10-.10(2) during the reporting period, the report shall so indicate.
11. Keep records showing the name, address of use, and responsible individual for each general licensee to whom he directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in 1200-2-10-.10(2) or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. The records shall show the date of each transfer, the model number, serial number and the isotope and quantity of radioactivity in each device transferred, the identity of any intermediate person(s), and compliance with the report requirements of this subparagraph. The records required by this part (5)(j)11. shall be maintained for a period of three (3) years from the date of the recorded event.

Authority: T.C.A. §68-202-101 et seq.

Paragraph (7) of Rule 1200-2-10-.16 Specific Terms and Conditions of Licenses is amended by deleting the paragraph and substituting the following, so that as amended the paragraph shall read:

- (7) Each specific licensee and each general licensee meeting the criteria of part 1200-2-10-.10(2)(c)14

Authority: T.C.A. 68-202-101 et seq., 68-202-206 and 4-5-202.

Rule 1200-2-10-.17 Expiration and Termination of Licenses is amended by deleting the rule and rule title and substituting the following, so that as amended the rule and rule title shall read:

1200-2-10-.17 EXPIRATION AND TERMINATION OF LICENSES AND DECOMMISSIONING OF SITES AND SEPARATE BUILDINGS OR OUTDOOR AREAS.

- (1) Expiration of specific licenses. Except as provided in 1200-2-10-.18(2), each specific license shall expire at the end of the day, in the month and year stated therein.
- (2) Termination of specific licenses:
 - (a) Specific licenses shall continue in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the Division notifies the licensee in writing that the license is terminated. During this time, the licensee shall:
 1. Limit actions involving radioactive material to those related to decommissioning; and
 2. Continue to control entry to restricted areas until they are suitable for release in accordance with Division requirements.
 - (b) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Division determines that:
 1. The licensee has properly disposed of radioactive material;
 2. The licensee has made reasonable effort to eliminate residual radioactive contamination, if present; and
 3. The premises are suitable for release in accordance with Division requirements. The licensee may demonstrate suitability for release by:
 - (i) Performance of the radiation survey described in 1200-2-10-.17(4)(d)2, or
 - (ii) Submission of other information that the Division determines is acceptable;
 4. The licensee has complied with any requests for information from the Division; and
 5. The licensee has submitted a written request for license termination to the Division.
- (3) Decommissioning of sites or separate buildings or outdoor areas:
 - (a) Each specific licensee shall notify the Division in writing, at the address in 1200-2-4-.07, within 60 days of any of the following occurrences:

1. The license has expired pursuant to 1200-2-10-.17(2); or
 2. The licensee has decided to permanently cease principal activities, as defined in this rule:
 - (i) At the entire site, or
 - (ii) In any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with Division requirements; or
 3. No principal activities under the license have been conducted for 24 months; or
 4. No principal activities have been conducted for 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with Division requirements.
- (b) Each specific licensee:
1. If not required by 1200-2-10-.17(4)(g) to submit a decommissioning plan, shall begin decommissioning its site or any separate building or outdoor area that contains residual radioactivity within 60 days of any occurrence listed in 1200-2-10-.17(4)(a).
 2. If required by 1200-2-10-.17(4)(g) to submit a decommissioning plan, shall:
 - (i) Submit a decommissioning plan within 12 months of notification of any occurrence listed in 1200-2-10-.17(4)(a), and
 - (ii) Begin decommissioning upon Division approval of that plan.
- (c) Coincident with the notification required by 1200-2-10-.17(4)(a), the specific licensee shall maintain in effect all financial assurances that were established, pursuant to 1200-2-10-.12(4) in conjunction with a license issuance or renewal, or that are required by this rule.
1. The Division will determine if the licensee shall increase, or may decrease, the amount of the financial assurance to cover the detailed cost estimate for decommissioning established pursuant to 1200-2-10-.17(4)(i)5.
 2. The licensee may with Division approval reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.
- (d) As the final steps in decommissioning, specific licensees shall:
1. Certify the disposition of all licensed material, including accumulated wastes; and
 2. Demonstrate that the premises are suitable for release in accordance with Division requirements.
 - (i) The licensee shall:
 - (I) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, or

- (II) Submit other information that the Division determines is acceptable.
- (ii) The licensee shall, as appropriate:
 - (I) Report levels of gamma radiation in units of microroentgens (millisieverts) per hour at 1 meter from surfaces, and
 - (II) Report levels of radioactivity, including alpha and beta, in units of:
 - I. Disintegrations per minute or microcuries (megabecquerels) per 100 square centimeters — removable and fixed — for surfaces,
 - II. Microcuries (megabecquerels) per milliliter for water, and
 - III. Picocuries (becquerels) per gram for solids such as soils or concrete, and
 - (III) Specify the survey instrument(s) used and certify that each instrument was properly calibrated and tested at the time of the survey.
- (e) Except as provided in 1200-2-10-.17(4)(k)(3), specific licensees shall complete decommissioning of the site or separate building or outdoor area so that the site, building or outdoor area is suitable for release in accordance with Division requirements as soon as practicable but no later than 24 months following the initiation of decommissioning.
- (f) Except as provided in 1200-2-10-.17(4)(k)(3), when decommissioning involves the entire site, the specific licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.
- (g) A specific licensee shall submit a decommissioning plan if:
 - 1. Required to do so by license condition; or
 - 2. The Division determines that the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Division and that these procedures could increase potential health and safety impacts to workers or to the public. Some examples are procedures:
 - (i) That would involve techniques not applied routinely during cleanup or maintenance operations;
 - (ii) In which workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;
 - (iii) That could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or
 - (iv) That could result in significantly greater releases of radioactive material to the environment than those associated with operation.
- (h) Specific licensees shall not carry out procedures with potential health and safety impacts before Division approval of the decommissioning plan.

- (i) The proposed decommissioning plan for the site or separate building or outdoor area shall include:
 - 1. A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;
 - 2. A description of planned decommissioning activities;
 - 3. A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;
 - 4. A description of the planned final radiation survey; and
 - 5. A detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for financial assurance, and a plan for assuring the availability of adequate funds for completion of decommissioning.
 - 6. For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in 1200-2-10-.17(4)(k)(3).
- (j) The Division will approve the proposed decommissioning plan if the information in the plan demonstrates that the licensee:
 - 1. Will complete decommissioning as soon as practicable; and
 - 2. Will adequately protect the health and safety of workers and the public.
- (k) Requests for extensions:
 - 1. A licensee may request a delay in initiating decommissioning.
 - (i) The Division may grant this delay, if the Division determines that this delay is not detrimental to the public health and safety and is otherwise in the public interest.
 - (ii) The request for a delay shall be submitted no later than 30 days before notification pursuant to 1200-2-10-.17(4)(a).
 - (iii) The schedule for decommissioning set forth in 1200-2-10-.17(4)(b) shall not start until the Division has made a determination on the request.
 - 2. A licensee may request an alternative schedule for the submittal of a decommissioning plan. The Division may approve the alternate schedule, if the Division determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.
 - 3. A licensee may request an alternative schedule for the completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate. The Division may approve the alternative schedule for completion of decommissioning, if the Division determines that it is warranted by consideration of the following:

- (i) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;
- (ii) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;
- (iii) Whether allowing short-lived radionuclides to decay will achieve a significant volume reduction in wastes requiring disposal;
- (iv) Whether allowing short-lived radionuclides to decay will achieve a significant reduction in radiation exposure to workers;
- (v) Other site-specific factors that the Division may determine are beyond the control of the licensee.

Authority: *T.C.A. §68-202-101 et seq.*

Paragraph (3) of Rule 1200-2-10-.22 Transfer of Material is amended by inserting the words “ or report” after the word “register”, so that as amended the paragraph shall read:

- (3) Before transferring sources of radiation to a specific licensee of the Division, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register or report with the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the source of radiation, the transferor of the source of radiation shall verify that the transferee’s authorization is for the receipt of the type, form, and quantity of the source of radiation to be transferred.

Authority: *T.C.A. 68-202-101 et seq.*

OTHER INFORMATION

Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Barbara A. Davis at the Division of Radiological health, Central Office, address below, prior to or following the public hearing. However, the Division must receive comments in its Central Office by 4:30 p.m. (CST), May 9, 2004, in order to assure consideration

Copies of draft rules are available for review in the Public Access Areas of the following Departmental Environmental Assistance Centers:

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

Knoxville Environmental Assistance Center
2700 Middlebrook Pike, Suite 220
Knoxville, TN 37921-5602

(865) 594-6035 / 1-888-891-8332

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

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

Copies are available for review also at the Division of Radiological Health, Central Office:
Division of Radiological Health
L & C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532
(615) 532-0364

The "DRAFT" rules may be accessed for review also at the Department's World Wide Web Site located at <http://www.state.tn.us/environment/new.htm>.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 19th day of February, 2004. (02-12)

DEPARTMENT OF HEALTH - 1200
TENNESSEE 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 an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 3rd day of May, 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 RULE

AMENDMENT

Rule 1200-30-1-.06, Fees, is amended by deleting subparagraphs (3) (a) and (3) (g) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (4) in its entirety, so that as amended, the new subparagraphs (3) (a) and (3) (g) shall read:

(3) (a)	Application Fee	\$250.00
(3) (g)	Renewal (Biennial) Fee	\$325.00

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 23rd day of February, 2004. (02-13)02-06

DEPARTMENT OF HEALTH - 1200 BOARD FOR LICENSING HEALTH CARE FACILITIES

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 10:30 a.m. (CDST) on the 15th day of April, 2004.

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

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

SUBSTANCE OF PROPOSED RULES**CHAPTER 1200-8-1
STANDARDS FOR HOSPITALS****AMENDMENTS**

Rule 1200-8-1-.01, Definitions, is amended by deleting paragraph (17) in its entirety and substituting instead the following language, so that as amended, the new paragraph (17) shall read:

- (17) Critical Access Hospital. A nonprofit or public hospital located in a rural area, certified by the Department as being a necessary provider of health care services to residents of the area, which makes available twenty-four (24) hour emergency care; is a designated provider in a rural health network; provides not more than twenty-five (25) acute care inpatient beds for providing inpatient care not to exceed an annual average of ninety-six (96) hours, and has a quality assessment and performance improvement program and procedures for utilization review. If swing-bed approval has been granted, all twenty-five (25) beds can be used interchangeably for acute or Skilled Nursing Facility (SNF/swing-bed) level of care services.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-255.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of February, 2004. (02-06)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 15th day of April, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-29

STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT

AMENDMENTS

Rule 1200-8-29-.04, Administration, is amended by adding the following language as new subparagraph (5)(c):

- (5) (c) Medical equipment delivery technicians, who install respiratory equipment, shall be deemed competent with their employer prior to independently delivering and setting up the respiratory equipment. The home medical equipment supplier must maintain documentation to demonstrate that competency requirements are met. Standard competencies will include at a minimum the following:
1. Role responsibilities;
 2. Cylinders;
 3. Pressure regulators/Flow controllers;
 4. Home liquid oxygen systems;
 5. Oxygen concentrators;
 6. Oxygen administration;
 7. Oxygen analyzers;
 8. Humidifiers; and
 9. Aerosol generators.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-226, and 68-11-222.

Rule 1200-8-29-.11, Records and Reports, is amended by deleting paragraph (1) in its entirety and renumbering the remaining paragraphs accordingly.

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

REPEALS

Rule 1200-8-29-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is repealed.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-224.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of February, 2004.
(02-05)

**TENNESSEE HOUSING DEVELOPMENT AGENCY - 0770
DIVISION OF SECTION 8 RENTAL ASSISTANCE**

There will be a hearing before the Tennessee Housing Development Agency to consider the promulgation of repeal of rules pursuant to T.C.A. § 13-23-115(18). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act T.C.A. §4-5-204 and will take place in the 11th floor conference room A of the Parkway Towers building located at 404 James Robertson Parkway, Nashville, Tennessee at 9:00 a.m. central time on the 16th day of April, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Housing Development Agency to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or date the party intends to review such filings), to allow time for the Tennessee Housing Development Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Housing Development Agency's ADA Coordinator, Mr. Don Harris, at 404 James Robertson Parkway, Nashville, Tennessee 37243-0900, (615) 741-2400.

For a copy of this notice of rulemaking hearing contact: Deborah Shearon, Tennessee Housing Development Agency, 404 James Robertson Parkway, Nashville, Tennessee 37243-0900, (615) 741-2400.

SUBSTANCE OF PROPOSED RULES**CHAPTER 0770-1-5
EXISTING HOUSING**

Rule 0770-1-5 Existing Housing is repealed.

Authority: T.C.A. §13-23-115(18), 42 U.S.C. 1437.

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of February, 2004.
(02-02)

**TENNESSEE HOUSING DEVELOPMENT AGENCY - 0770
DIVISION OF SECTION 8 RENTAL ASSISTANCE**

There will be a hearing before the Tennessee Housing Development Agency to consider the promulgation of new rules pursuant to T.C.A. § 13-23-115(18). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act T.C.A. §4-5-204 and will take place in the 11th floor conference room A of the Parkway Towers building located at 404 James Robertson Parkway, Nashville, Tennessee at 9:00 a.m. central time on the 16th day of April, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Housing Development Agency to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or date the party intends to review such filings), to allow time for the Tennessee Housing Development Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Housing Development Agency's ADA Coordinator, Mr. Don Harris, at 404 James Robertson Parkway, Nashville, Tennessee 37243-0900, (615) 741-2400.

For a copy of this notice of rulemaking hearing contact: Deborah Shearon, Tennessee Housing Development Agency, 404 James Robertson Parkway, Nashville, Tennessee 37243-0900, (615) 741-2400.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0770-1-5
HOUSING CHOICE VOUCHER PROGRAM**

NEW RULES

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0770-1-5-.01 General	0770-1-5-.07 Application Process
0770-1-5-.02 Objectives	0770-1-5-.08 Selection of Unit
0770-1-5-.03 Definitions	0770-1-5-.09 Tenancy
0770-1-5-.04 Administrative Plan	0770-1-5-.10 Termination of Assistance – Tenant Factors
0770-1-5-.05 Forms	0770-1-5-.11 Termination of Payments to Owner
0770-1-5-.06 Eligibility	0770-1-5-.12 Termination by the Agency

0770-1-5-.01 GENERAL. These regulations prescribe the policies, procedures and authorization for administering the Housing Choice Voucher Program under the U.S. Housing Act of 1937.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.02 OBJECTIVES. The program is designed to assist low-income households in obtaining decent, safe and sanitary rental housing.

Authority: T.C.A. §13-23-115(13), (14) & (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.03 DEFINITIONS

- (1) Administrative Plan. A document prepared by the Agency as required by federal law. The Administrative Plan implements federal law governing the Program.
- (2) Agency. The Tennessee Housing Development Agency created by T.C.A. 13-23-101 et. seq.
- (3) Annual Contributions Contract (ACC). The contract entered into between HUD and the Agency through which the Agency receives federal funding to provide program benefits, establishes the relationship between HUD and the Agency and defines the duties and responsibilities of both parties.
- (4) Applicant. Any person or household that applies for a voucher.
- (5) Federal Funding. Money paid by the federal government to the Agency or to other entities at the Agency's request in relation to the Housing Choice Voucher Program.
- (6) Federal Program Requirements. Includes all applicable federal law related to the Housing Choice Voucher Program, including 42 U.S.C. 1437, 24 C.F.R. Part 982 and any subsequent or additional handbooks or guidance provided by HUD.
- (7) Household. One or more persons living in the same unit or applying together for a single unit.
- (8) Housing Assistance Payments Contract (HAP). A contract entered into between the Agency and the Owner that provides for payment of that portion of the rent for a unit the Program will pay the Owner on behalf of the Recipient so long as the Program Requirements are met.
- (9) Housing Choice Voucher Program (Program). A program created by the U.S. Housing Act of 1937, as amended. The Program provides Recipients a voucher which pays a portion of the Recipient's rent, subject to compliance with all Program Requirements.
- (10) Housing Quality Standards (HQS). Standards established by HUD that define the minimum acceptable condition for a housing unit participating in the Program.
- (11) HUD. The U. S. Department of Housing and Urban Development. The federal agency responsible for implementing the statutory provisions creating the Housing Choice Voucher Program.
- (12) Lease. An agreement signed between the Owner and the Recipient defining the duties and obligations of each party to the other.
- (13) Owner. The person or entity that owns the unit rented by the Recipient under the Housing Choice Voucher Program, or the authorized agent for that person or entity.
- (14) Preference. A circumstance or category of Applicants or Recipients that may be provided special treatment under the Program.
- (15) Program Requirements. Federal Program Requirements, the Administrative Plan and these rules.
- (16) Recipient. Any person or household that receives assistance through this program.
- (17) Unit. The apartment or other approved living quarters of a household.

- (18) Voucher. A document issued by the Agency to a family selected for admission to the Program. This document describes the Program and the procedures for Agency approval of a unit selected by the Recipient. The Voucher also states the obligations of the Recipient under the Program.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.04 ADMINISTRATIVE PLAN.

- (1) Pursuant to 24 C.F.R. 982.54, the Agency shall prepare an Administrative Plan.
- (2) The Agency shall administer the Program in compliance with the Administrative Plan and shall update the Administrative Plan as necessary and as required by Federal Program Requirements to assure continued Federal Funding for the Program.

Authority: T.C.A. § 13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.05 FORMS. The Agency shall use and/or create such forms as may be necessary for the making and processing of applications and for performance of its obligations under the ACC and Program Requirements.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.06 PROGRAM ELIGIBILITY.

- (1) Applicants and Recipients shall be eligible to receive housing assistance through the Agency under the Program only in accordance with Program Requirements. From time to time the Agency may limit eligibility in its Administrative Plan in accordance with Federal Program Requirements, and the ACC. The Agency shall establish appropriate methods in the Administrative Plan to effectuate the selection of Applicants to receive Vouchers in accordance with Program Requirements.
- (2) The Agency shall verify income eligibility of Applicants and Recipients by utilizing such methods and forms as may be provided for and/or required by the Program Requirements. Applicants shall not be eligible for the Program if income is greater than the maximum allowable income for the Program.
- (3) An Applicant shall not receive a Voucher unless all eligibility requirements established in the ACC and Administrative Plan are met, no legal impediment exists that would exclude the Applicant, and the Agency has a Voucher available.
- (4) Recipients shall continue to receive assistance under the Program subject to all Program Requirements.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.07 APPLICATION PROCESS.

- (1) Each Applicant shall complete all application documents and provide all requested documentation prior to consideration for assistance under the program.

- (2) The Agency may, in its discretion, accept preliminary applications where no Vouchers are currently available. The Agency shall include in the Administrative Plan the procedure for accepting preliminary applications and maintaining a waiting list that complies with Program Requirements.
- (3) Prior to issuing a Voucher, the Agency shall verify Applicant income, Applicant composition, value of assets, factors allowing a preference, status of full-time students and any other factors relating to eligibility determinations as required by the Program Requirements.
- (4) The Agency shall determine, at its discretion, the verification methods used. The Agency shall seek independent written or oral third party verification when feasible. If independent written or oral third party verification is not feasible, review of documentation, Applicant certification and any other means the Agency determines shall satisfy the verification requirement may be utilized.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.08 SELECTION OF UNIT.

- (1) The Agency has no obligation to find a unit for any Recipient. The Recipient is responsible for locating a unit that suits the Recipient's needs and meets all Program Requirements, including, but not limited to, the time limits for selection of a unit.
- (2) Once a unit is selected and the Owner agrees to rent to the Recipient, the Agency must inspect the unit for compliance with Housing Quality Standards.
- (3) If the unit passes the Housing Quality Standards inspection, the Owner and the Agency may enter into a HAP contract.
- (4) Subsequent to approval of the unit by the Agency, and the Owner and Agency executing a HAP contract, the Owner and Recipient shall execute a lease that complies with all Program Requirements, state and federal law.
- (5) The Agency shall provide the Owner and Recipient with information concerning their respective obligations in relation to the Housing Quality Standards and the Program.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.09 TENANCY.

- (1) After a unit is selected and approved and a HAP contract and lease have been executed, the Agency shall continue to perform such compliance obligations as may be required under the Program Requirements including, but not limited to, monitoring Housing Quality Standards, processing complaints by the parties, processing monthly payments under the HAP contract in accordance with Program Requirements and such other functions as may be required under the Program Requirements.
- (2) Recipients must provide all requested documentation and otherwise cooperate with the Agency in the administration of the Program as provided in the Program Requirements. Failure by a Recipient to cooperate with the Agency in administering Program Requirements or otherwise violating Program Requirements may be grounds for termination of assistance under the Program as determined under the Program Requirements.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.10 TERMINATION OF ASSISTANCE – RECIPIENT FACTORS. A Recipient shall continue to receive assistance until such time as the Recipient no longer qualifies under the Program Requirements. The Agency shall comply with all Program Requirements concerning termination of assistance and shall provide in the Administrative Plan when termination may occur and the procedures the Agency shall follow in terminating assistance.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.11 TERMINATION OF PAYMENTS TO OWNER. The Agency shall continue to make payments to the Owner under the HAP and ACC so long as the Recipient is lawfully occupying the unit, and remains eligible for Program assistance, and the Owner complies with the HAP contract. The Administrative Plan shall provide when termination may occur and the procedures the Agency shall follow in terminating payments to an Owner.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

0770-1-5-.12 PROGRAM REDUCTION OR TERMINATION.

- (1) Should Federal Funding for this Program be reduced or eliminated, or should the Agency no longer participate in the Program, the Agency shall have no obligation to continue the Program or provide assistance to Recipients.
- (2) If the Agency no longer participates in the Program, it shall take such actions as are feasible to assist transition of Recipients.
- (3) Should Federal Funding be reduced, the Agency shall apply its eligibility criteria to determine which Recipients shall continue to receive assistance based on available Federal Funding for the Program. Once all Federal Funding is expended, any Recipients for whom no remaining Federal Funding exists shall no longer receive assistance.
- (4) Should Federal Funding be eliminated, the Agency shall notify all Owners and Recipients of the effective date of Program termination.
- (5) The Agency's obligation to provide Housing Choice Vouchers and HAP payments associated therewith is dependent upon receipt of Federal Funding. The Agency is obligated only to provide payments to the extent such Federal Funding is received, and only in accordance with Program Requirements.

Authority: T.C.A. §13-23-115 (18), 42 U.S.C. 1437, 24 C.F.R. Part 982.

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of February, 2004.
(02-01)

THE TENNESSEE MASSAGE LICENSURE BOARD - 0870

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-18-211. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 30th day of April, 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 RULE

AMENDMENT

Rule 0870 1 .04, Licensure and Provisional Licensure Process, is amended by deleting subpart (1) (f) 1. (iii) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparts (1) (f) 1. (iv) and (1) (f) 1. (v), and is further amended by deleting subparagraph (1) (l) in its entirety and substituting instead the following language, so that as amended, the new subparts (1) (f) 1. (iii), (1) (f) 1. (iv) and (1) (f) 1. (v), and the new subparagraph (1) (l) shall read:

- (1) (f) 1. (iii) Eighty-five (85) classroom hours of the five hundred (500) classroom hour requirement shall consist of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).
- (1) (f) 1. (iv) Ten (10) classroom hours of the five hundred (500) classroom hour requirement shall consist of ethics courses.
- (1) (f) 1. (v) Five (5) classroom hours of the five hundred (500) classroom hour requirement shall consist of courses regarding Tennessee massage statutes and regulations.
- (1) (l) Reciprocity licensure applicants must submit along with their applications copies of the statutes and rules governing the licensure/certification qualifications and process from all states in which they hold current licensure/certification. The Board will determine in its sole discretion whether the licensure/certification standards of any other state are as stringent as those of Tennessee for purposes of granting licensure under this rule. Under no circumstances shall an applicant be approved for licensure without successfully completing the five (5) classroom hours of courses regarding Tennessee massage statutes and regulations as required in subpart (1) (f) 1. (v).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-18-204, 63-18-205, 63-18-211, and 63-18-212.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of February, 2004. (02-11)

**BOARD OF MEDICAL EXAMINERS - 0880
COMMITTEE FOR CLINICAL PERFUSIONISTS**

There will be a hearing before the Tennessee Board of Medical Examiners' Committee for Clinical Perfusionists to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-6-101, 63-28-107, 63-28-114, and 63-28-118. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 19th day of April, 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 RULE

AMENDMENT

Rule 0880-11-.06 Fees, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- | | |
|---|-----------|
| (2) Biennial renewal fee to be submitted every two (2) years when licensure renewal is due. | \$ 350.00 |
|---|-----------|

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-6-101, 63-28-107, 63-28-114, and 63-28-118.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of February, 2004. (02-08)

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

There will be a hearing before the Tennessee Board of Occupational and Physical Therapy Examiners' Committee of Occupational Therapy to consider the promulgation of amendments to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-13-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 28th day of April, 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 1150-2-.01, Definitions, is amended by deleting paragraph (24) in its entirety and substituting instead the following language, so that as amended, the new paragraph (24) shall read:

- (24) Recognized educational program - an educational program in occupational therapy approved by the committee of occupational therapy and accredited by the Accreditation Council of Occupational Therapy Education in collaboration with the American Occupational Therapy Association; or alternatively, as the case may be, an educational program for occupational therapy assistants approved by the Committee of Occupational therapy and the American Occupational Therapy Association.

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

Rule 1150-2-.02, Scope of Practice, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) The certification to practice as an Occupational Therapist or an Occupational Therapy Assistant is prescribed and limited by the Tennessee Code Annotated (see especially T.C.A. §63-13-103). The certificate is conferred by the Tennessee Board of Occupational and Physical Therapy Examiners for applicants who have been found to meet established standards.

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

Rule 1150-2-.04, Qualifications for Certification, is amended by deleting subparagraphs (1) (b), (1) (d), and (2) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (b), (1) (d), and (2) (d) shall read:

- (1) (b) Have successfully completed the academic requirements of an educational program in occupational therapy approved by the committee of occupational therapy and accredited by the Accreditation Council of Occupational Therapy Education in collaboration with the American Occupational Therapy Association;
- (1) (d) Pass the National Board for Certification in Occupational Therapy Examination administered by the National Board for Certification in Occupational Therapy, or be entitled to certification as provided in T.C.A. § 63-13-213.
- (2) (d) Pass the National Board for Certification in Occupational Therapy Examination administered by the National Board for Certification in Occupational Therapy.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-108, 63-13-202, and 63-13-213.

Rule 1150-2-.05, Procedures for Certification, is amended by deleting subparagraphs (1) (e), (1) (h), (2) (c) and (2) (h) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (e), (1) (h), (2) (c) and (2) (h) shall read:

- (1) (e) An applicant shall submit with his application a “passport” style photograph taken within the preceding 12 months.
- (1) (h) It is the responsibility of the applicant to request a copy of his certification examination results from the National Board for Certification in Occupational Therapy Examination or their authorized agent be sent directly to the Committee’s administrative office. The Committee will not accept examination results sent directly from the applicant.
- (2) (c) An applicant shall submit with his application a “passport” style photograph taken within the preceding twelve (12) months.
- (2) (h) It is the responsibility of the applicant to request a copy of his certification examination results from the National Board for Certification in Occupational Therapy Examination or their authorized agent be sent directly to the Committee’s administrative office. The Committee will not accept examination results sent directly from the applicant.

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

Rule 1150-2-.08, Examinations, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Occupational Therapist
 - (a) The examination adopted by the Committee shall be National Board for Certification in Occupational Therapy Examination or its successor exam administered by the National Board for Certification in Occupational Therapy. The Committee adopts the passing scores as set by the National Board for Certification in Occupational Therapy. Examination scores are provided

automatically and directly to the candidate by the National Board for Certification in Occupational Therapy.

- (b) It is the responsibility of the applicant to request a copy of his certification examination results from the National Board for Certification in Occupational Therapy Examination or their authorized agent be sent directly to the Committee's administrative office. The Committee will not accept examination results sent directly from the applicant.
- (2) Occupational Therapy Assistant
- (a) The examination adopted by the Committee shall be the Board for Certification in Occupational Therapy Examination or its successor examination administered by the Board for Certification in Occupational Therapy. The Committee adopts the passing scores as set by the Board for Certification in Occupational Therapy. Examination scores are provided automatically and directly to the candidate by the Board for Certification in Occupational Therapy.
 - (b) It is the responsibility of the applicant to request a copy of his certification examination results from the National Board for Certification in Occupational Therapy Examination or their authorized agent be sent directly to the Committee's administrative office. The Committee will not accept examination results sent directly from the applicant.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of February, 2004. (02-07)

BOARD OF OPTOMETRY - 1045

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 16th day of April, 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 1045-2-.01, Fees, is amended by deleting subparagraphs (1) (a), (1) (b), and (1) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a), (1) (b), and (1) (d) shall read:

- (1) (a) Application Fee – A non-refundable fee to be paid each time an application for initial licensure is filed. \$ 300.00
- (1) (b) Reinstatement Fee – A non-refundable fee to be paid each time an application for reinstating an expired license is filed. \$ 200.00
- (1) (d) Licensure Renewal Fee – A non-refundable fee to be paid biennially by all licensees except Inactive Volunteers. This fee also applies to licensees who reactivate a retired license or who reactivate an inactive license. \$ 330.00

Authority: T.C.A. §§4-5-202, 4-5-204, 63-8-112, 63-8-115, 63-8-119, and 63-8-133.

Rule 1045-2-.09, Ocular and Contact Lens Prescriptions and Office Equipment, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Optometrists shall comply with all federal statutes and regulations regarding release of verified contact lens prescriptions. The Board of Optometry shall consider the failure to comply as constituting unprofessional conduct and shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-8-120.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-8-112, and 63-8-120.

Rule 1045-2-.11, Scope of Practice, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraphs accordingly.

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

Rule 1045-2-.14, Repealed, is amended by deleting the catchline in its entirety and substituting instead the following new catchline, and is further amended by adding the following language as new paragraphs (1), (2), (3), (4), and (5), so that as amended, the new catchline and the new paragraphs (1), (2), (3), (4), and (5) shall read:

1045-2-.14 OPTOMETRIC RECORDS.

- (1) Purposes – The purposes of these rules are:
 - (a) To recognize that optometric records are an integral part of the practice of optometry as defined in T.C.A. § 63-8-102.

- (b) To give optometrists, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
- (2) Conflicts – As to optometric records, these rules should be read in conjunction with the provisions of T.C.A. § 63-2-101, T.C.A. § 63-2-102 and Rule 1045-2-.11 (d), and are not intended to conflict with those statutes or rules in any way. Those statutes and rules, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.
- (3) Applicability – These rules regarding optometric records shall apply only to those records, the information for which was obtained by optometrists or their employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.
- (4) Optometric Records
- (a) Duty to Create and Maintain Optometric Records – As a component of the standard of care and of minimal competency an optometrist must cause to be created and maintained an optometric record for every patient for whom he or she, and/or any of his or her supervisees, performs services or provides professional consultation
 - (b) Notice – Anywhere in these rules where notice is required to be given to patients of any optometrist that notice shall be required to be issued within thirty (30) days of the date of the event that triggers the notice requirement, and may be accomplished by public notice or by any other means reasonably designed to inform the patients.
 - (c) Content – All optometric records, or summaries thereof, produced in the course of the practice of optometry for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating optometrist can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.
 - (d) Transfer
 - 1. Records of Optometrists upon Death or Retirement - When an optometrist retires or dies while in practice, patients seen by the optometrist in his/her office during the immediately preceding thirty-six (36) months shall be notified by the optometrist, or his/her authorized representative and urged to find a new optometrist and be informed that upon authorization, copies of the records will be sent to the new optometrist.
 - 2. Records of Optometrists Departure from a Group - The responsibility for notifying patients of an optometrist who leaves a group practice whether by death, retirement, or departure shall be governed by the optometrist's employment contract.
 - (i) Whomever is responsible for that notification must notify patients seen by the optometrist in his/her office during the immediately preceding thirty-six (36) months of his/her departure.
 - (ii) Except where otherwise governed by provisions of the optometrist's contract, those patients shall also be notified of the optometrist's new address and offered the opportunity to have copies of their medical records forwarded to the departing optometrist at his or her new practice. Provided however, a group shall not withhold the records of any patient who has authorized their transfer to the departing optometrist or any other optometrist.

- (iii) The choice of optometrist in every case should be left to the patient, and the patient should be informed that upon authorization his/her records will be sent to the optometrist of the patient's choice.
3. Sale of an Optometric Practice - An optometrist or the estate of a deceased optometrist may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the optometrist's records. Therefore, the transfer of records of patients is subject to the following:
- (i) The optometrist (or the estate) must ensure that all optometric records are transferred to another optometrist or entity that is held to the same standards of confidentiality as provided in these rules.
 - (ii) Patients seen by the optometrist in his/her office during the immediately preceding thirty-six (36) months shall be notified that the optometrist (or the estate) is transferring the practice to another optometrist or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another optometrist or entity of their choice.
- (e) Abandonment of Optometric Records – For purposes of this section of the rules death of an optometrist shall not be considered as abandonment.
- 1. It shall be a prima facie violation of T.C.A. § 63-8-120(a)2 for an optometrist to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.
 - 2. Upon notification that an optometrist in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise established a secure method of patient access to their records, patients should take all reasonable steps to obtain their optometric records by whatever lawful means available and should immediately seek the services of another optometrist.
- (f) Retention of Optometric Records – Optometric records shall be retained for a period of not less than ten (10) years from the optometrist's or his supervisees' last professional contact with the patient except for the following:
- 1. Optometric records for incompetent patients shall be retained indefinitely.
 - 2. Optometric records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the optometrist's or his supervisees' last professional contact with the patient, whichever is longer.
 - 3. Notwithstanding the foregoing, no optometric record involving services which are currently under dispute shall be destroyed until the dispute is resolved.
- (g) Destruction of Optometric Records
- 1. No record shall be singled out for destruction other than in accordance with established office procedures.

2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
 3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
 4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient optometric records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's optometric records.
- (5) Violations – Violation of any provision of these rule is grounds for disciplinary action pursuant to T.C.A. § 63-8-120(a)(2).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-3-102, 63-8-112, and 63-8-120.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of February, 2004. (02-09)

TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 1:30 p.m. (central) on the 26th day of April, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Regulatory Authority to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or the date the party intends to review the filings), to allow time for the Tennessee Regulatory Authority to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Regulatory Authority's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505 and 615/741-2904, extension 138.

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

SUBSTANCE OF PROPOSED RULE

1220-4-1-.08 NAME CHANGES FOR PUBLIC UTILITIES.

- (1) Any public utility certificated to provide services in the state of Tennessee pursuant to Tenn. Code Ann. § 65-4-201 shall petition for approval of the Authority before doing either of the following:

- (a) Changing the registered business name of the certificated public utility; or
 - (b) Adopting an assumed business name under which the public utility will provide services to its Tennessee customers.
- (2) A petition for approval of either action referenced in subsection (1) above shall include the following:
- (a) For public utilities operating as either a corporation, limited liability company, or limited partnership, verification that the certificated public utility has registered the changed or assumed business name with the Office of the Tennessee Secretary of State in compliance with the requirements of Tenn. Code Ann. §§ 48-14-103, 48-54-103, 48-207-103, or 61-2-103;
 - (b) For public utilities providing telecommunications services in the state of Tennessee, verification that the changed or assumed corporate name has been recorded in the public utility's surety bond or letter of credit obtained pursuant to Tenn. Code Ann. § 65-4-125; and
 - (c) If the certificated public utility is currently serving end user customers in the state of Tennessee, a proposed notice for the Authority's approval to be sent to the utility's Tennessee customers for the purpose of informing these customers of the anticipated change in business name or adoption of an assumed business name, consistent with the requirements of TRA Rule 1220-4-02-.56(2).
- (3) At its own discretion, the Authority may waive any of the requirements of subsection (2) of this rule for good cause.

Authority: *T.C.A. §§65-2-101, 65-4-104, 65-4-201, 48-14-103, 48-54-103, 48-207-103, and 61-2-103.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of February, 2004. (02-25)

TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 2 p.m. (central) on the 26th day of April, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Regulatory Authority to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or the date the party intends to review the filings), to allow time for the Tennessee Regulatory Authority to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Regulatory Authority's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505 and 615/741-2904, extension 138.

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

SUBSTANCE OF PROPOSED RULE

CHAPTER 1220-4-11

CONSUMER REGISTRATION WITH THE TENNESSEE DO NOT CALL REGISTER

AMENDMENT

Subparagraph (b) of Paragraph (1) of Rule 1220-4-11-.05, Consumer Registration with the Tennessee Do Not Call Register, is amended by deleting the subparagraph and by substituting instead the following language:

- (b) A residential telephone subscriber will remain on the "Do Not Call Register" until the subscriber requests that the Authority removes his or her telephone number from the Register. No later than January 31st of each year, the Authority shall publish a notice in all newspapers of general circulation in the state informing subscribers on the Register as to how to have their telephone numbers removed from the Register.

Authority: T.C.A. §§65-2-102 and 65-4-405. *Administrative History:* Original rule filed February 22, 2000; effective May 7, 2000.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of February, 2004. (02-23)

BOARD OF RESPIRATORY CARE - 1330

There will be a hearing before the Tennessee Board of Respiratory Care to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-27-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 7th day of May, 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 RULE**NEW RULE****TABLE OF CONTENTS**

1330-1-.03 Delivery of Respiratory Equipment to a Patient's Place of Residence

1330-1-.03 DELIVERY OF RESPIRATORY EQUIPMENT TO A PATIENT'S PLACE OF RESIDENCE.

- (1) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts are considered to constitute the practice of respiratory care because they are a part of the administration of medical gasses:
 - (a) Initial patient assessment;
 - (b) Attachment of the respiratory equipment to the patient;
 - (c) Ongoing assessment of the patient's response to the administration of the medical gas;
 - (d) Initial and ongoing instruction and education of the patient (and of the patient's family or other caregiver, where relevant) in the proper use of the respiratory equipment; and
 - (e) Recommendation to the physician of needed modifications in the physician's order.
- (2) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts are not considered to constitute the practice of respiratory care
 - (a) Delivery of the respiratory equipment to the patient's place of residence;
 - (b) Initial assembly of the respiratory equipment in the patient's place of residence;
 - (c) Initial inspection and assessment of the environment in which the respiratory equipment is to be used;
 - (d) Exchange of empty medical gas cylinders;
 - (e) Refilling of liquid oxygen containers; and
 - (f) Delivery of replacement disposable supplies.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-27-102, 63-27-104, 63-27-105, 63-27-110, and 63-27-117.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of February, 2004. (02-16)

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WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 04-03

AMENDMENT TO PROCLAMATION 03-19 REGULATING SPORT FISHING

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119, thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following amendment to Proclamation 03-19 dealing with sport fishing.

In Section VII., under “Special Regulations on Lakes Controlled by Non-State Governmental Agencies”, add subsection C. as follows:

C. Campbell Lake (Mt. Pleasant) – Black bass: creel limit - 5; minimum length – 12”, catfish: creel limit – 5, crappie: creel limit – 30, bluegill/redear sunfish combined: creel limit – 20.

Proclamation 04-03 received and recorded this 27th day of February, 2004. (02-20)

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CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning February 2, 2004 and ending February 27, 2004.


RILEY C. DARNELL
Secretary of State

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