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TENNESSEE ADMINISTRATIVE REGISTER



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RILEY C. DARNELL
Secretary of State

Division of Publications
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PREFACE

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

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

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

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

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

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

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

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

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ANNOUNCEMENTS

THE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

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

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

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 June 2004 is 9.29 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 5.29 percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Kevin P. Lavender

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the preceding 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.

04-01	April 5, 2004	0780 Commerce and Insurance Division of Securities	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0780-4-1 General Administration</i> 0780-4-1-.03 Definitions 0780-4-1-.04 Administration of the Act</p> <p><i>Chapter 0780-4-2 Securities Registration and Exemptions</i> 0780-4-2-.01 Registration By Coordination 0780-4-2-.06 Standards of Fairness and Reasonableness 0780-4-2-.07 Non-profit Exemption 0780-4-2-.12 Notice Filings For Covered Securities</p> <p><i>0780-4-3 Industry Regulation</i> 0780-4-3-.01 Registration 0780-4-3-.02 Post Registration 0780-4-3-.04 Persons Not Deemed To Be Broker-Dealers 0780-4-3-.06 Investment Adviser Notice Filings 0780-4-3-.11 Persons Deemed Not To Be "Agents" 0780-4-3-.12 Definition of "Client Of An Investment Adviser"</p> <p><i>Chapter 0780-4-2 Securities Registration and Exemptions</i> 0780-4-2-.15 Bank Holding Company Exemption</p> <p><i>Chapter 0780-4-3 Industry Regulation</i> 0780-4-3-.15 Exemption from Broker-Dealer Registration for Certain Canadian Broker-Dealers</p>	Maliaka Bass EssameiDin 500 J Robertson Pkwy D Crockett Twr 5th Fl. Nashville TN 37243 (615) 741-2199	June 19, 2004
04-05	April 14, 2004	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules	New Rules	<p><i>Chapter 0780-1-74 Pre-Licensing Education and Examination Requirements for Insurance Producers</i> 0780-1-74-.01 Pre-licensing Education Requirements 0780-1-74-.02 Examination Requirements 0780-1-74-.03 Agents for Health</p>	John F. Morris Davy Crockett Twr 5th Fl 500 J Robertson Pkwy Nashville TN 37243 615-741-2199	June 28, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-05. cont.				Repeals	<p>Organizations</p> <p><i>Chapter 0780-1-16</i> <i>Written Examination for Agents</i></p> <p><i>Chapter 0780-1-42</i> <i>Relating to Educational Requirements for Life, Accident and Health Insurance Agents</i></p> <p><i>Chapter 0780-1-55</i> <i>Insurance Agent and Limited Insurance Representative Licensing</i></p> <p><i>Chapter 0780-1-56</i> <i>Educational Requirements</i></p> <p>0780-1-56-.01 Purpose</p> <p>0780-1-56-.02 Basic Requirements</p>		
04-06	April 14, 2004	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules	New Rules	<p><i>Chapter 0780-1-76</i> <i>Self-Insuring Associations and Non-Profit Business Coalitions for Health</i></p> <p>0780-1-76-.01 Purpose and Scope</p> <p>0780-1-76-.02 Definitions</p> <p>0780-1-76-.03 Certificate of Authority Required</p> <p>0780-1-76-.04 Authority to Act as a Self-Funded Qualified Multiple Employer Welfare Arrangement</p> <p>0780-1-76-.05 Application for a Certificate of Authority</p> <p>0780-1-76-.06 Minimum Surplus</p> <p>0780-1-76-.07 Investments</p> <p>0780-1-76-.08 Contribution Rates</p> <p>0780-1-76-.09 Reporting Requirements</p> <p>0780-1-76-.10 Consumer Information Notice</p> <p>0780-1-76-.11 Examinations and Investigations</p> <p>0780-1-76-.12 Licensing of Agents</p> <p>0780-1-76-.13 Taxes</p> <p>0780-1-76-.14 Misrepresentation Prohibited</p> <p>0780-1-76-.15 Prohibited Use of Certain Names</p> <p>0780-1-76-.16 Applicability of Other Provisions</p>	John F. Morris Davy Crockett Twr. 5th Fl 500 James Robertson Pkwy Nashville TN 37243 615-741-2199	June 28, 2004

04-06, cont						0780-1-76-.17 Exemptions 0780-1-76-.18 Cease and Desist Orders 0780-1-76-.19 Penalties 0780-1-76-.20 Applicability of the Insurers Rehabilitation and Liquidation Acts			
04-07	April 15, 2004	0030 Commission on Aging and Disability	Rulemaking Hearing Rules	New Rules		Chapter 0030-2-2 State-Wide Medicaid Home and Community Based Services Waiver for Elderly and Disabled Adults 0030-2-2-.01 Purpose 0030-2-2-.02 Minimum Requirements (Principles) for Case Management Services	Charles Hewgley Aging and Disability Andrew Jackson Bldg 500 Deaderick St Suite 825, Nashville TN 37243-0860 (615) 741-2056	June 29, 2004	
04-11	April 16, 2004	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules	Amendments		Chapter 0780-1-56 Educational Requirements 0780-1-56-.01 Purpose 0780-1-56-.02 Basic requirements 0780-1-56-.03 Qualifying programs 0780-1-56-.04 Control and reporting systems 0780-1-56-.05 Extensions of time 0780-1-56-.06 Reciprocity 0780-1-56-.07 Penalty 0780-1-56-.08 Educational advisory committee	Barbara A. Doak Commerce and Insurance Davy Crockett Twr 5th Fl 500 James Robertson Pkwy Nashville TN 37243 615-741-2199	June 30, 2004	
04-12	April 19, 2004	0400 Environment and Conservation	Rulemaking Hearing Rules	Amendments		Chapter 1200-5-1 Public Water Systems 1200-5-1-.06 Maximum Contaminant Levels 1200-5-1-.31 Filtration and Disinfection	Robert Foster Water Supply 6th Fl L&C Twr Nashville TN 37243-1549 615-532-0155	July 3, 2004	
04-13	April 21, 2004	0800 Labor and Workforce Development Division of Occupational Safety and Health	Proposed Rules	Amendment		Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry 0800-1-1-.06 Adoption and Citation of Federal Standards 0800-1-1-.07 Table Z-1-A – Limits For Air Contaminants	Michael M. Maenza Labor and Workforce Development Occupational Safety and Health 3rd Fl A Johnson Twr 710 J Robertson Pkwy	August 27, 2004	

04-13, cont.					<p>Chapter 0800-1-6 Occupational Safety and Health Standards for Construction 0800-1-6-.02 Adoption and Citation of Federal Standards</p> <p>Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture 0800-1-7-.01 Adoption and Citation of Federal Standards 0800-1-7-.02 Exceptions to Adoption of Federal 04-14 Standards in 29 CFR Part 1928</p>	Nashville TN 37243-0659 (615) 741-7036	
04-17	1660 Wildlife Resources Commission	Rulemaking Hearing Rules	Amendments		<p>Chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels 1660-2-7-.11 Special Areas</p>	Sheryl Holtam TWRA POB 40747 Nashville TN 37204 615-781-6606	July 10, 2004
04-19	0940 Mental Health and Developmental Disabilities Office of Licensure	Rulemaking Hearing Rules	New Rules and Repeal		<p>Chapter 0940-5-24 Minimum Program Requirements for Mental Retardation Residential Habilitation Facilities 0940-5-24-.01 Health, Safety and Welfare Safeguards in Residential Habilitation Facilities 0940-5-24-.02 Personnel and Staffing Requirements for Residential Habilitation Facilities 0940-5-24-.03 Service Recipient Record Requirements for Residential Habilitation Facilities 0940-5-24-.04 Medication Administration in Residential Habilitation Facilities 0940-5-24-.05 Supports and Services in Residential Habilitation Facilities 0940-5-24-.06 Personal Support and Assistance in Residential Habilitation Facilities 0940-5-24-.07 Recreational Activities in</p>	Arthur L. Hyde Cynthia Clark Tyler Mental Health and Developmental Disabilities 5th Fl Cordell Hull Bldg 425 5th Ave N Nashville TN 37243 (615) 532-6590	July 13, 2004

04-19, cont.						Residential Habilitation Facilities 0940-5-24-.08 Day Activities in Residential Habilitation Facilities 0940-5-24-.09 Assessment Requirements for Residential Habilitation Facilities 0940-5-24-.10 Individual Support Plan Requirements for Residential Habilitation Facilities 0940-5-24-.11 Individual Support Plan Monitoring in Residential Habilitation Facilities 0940-5-24-.12 Requirements for the Use of Restricted Behavior Interventions for Residential Habilitation Facilities 0940-5-24-.13 Use of Psychotropic Medications in Residential Habilitation Facilities					
04-20	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendment		Chapters 1200-13-1 General Rules 1200-13-1-.17 Home and Community Based Services Demonstration Projects				April 28, 2004 through October 10, 2004		
04-22	0600 State Board of Equalization	Rulemaking hearing rules	New Rule		Chapter 0600-1 Contested case procedures 0600-1-.17 Fees				July 14, 2004	Kelsie Jones Board of Equalization Ste. 1700 505 Deaderick St. Nashville TN 37243-0280 615/747-5379	
04-23	0600 State Board of Equalization	Rulemaking hearing rules	New Rule		Chapter 0600-8 Property tax exemptions 0600-8-.01 Application form and fees 0600-8-.02 Criteria for exemption of land 0600-8-.03 Criteria for exemption of medical clinics				July 14, 2004	Kelsie Jones Board of Equalization Ste. 1700 505 Deaderick St. Nashville TN 37243-0280 615/747-5379	

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

Applications will be heard at the June 23, 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 April 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) 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 for the applicant 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
<p>*Kingsport Bronchoscopy Center, Inc. 111 West Stone Drive, Medical Office Plaza Kingsport (Sullivan County), TN 37760 CNO403-021 Contact Person: Shirley Hawkins, Administrator Phone No. 423-247-5197 <i>May Consent Calendar</i></p>	<p>The relocation of an existing licensed ambulatory surgical treatment center (ASTC) from 135 West Ravine Road to 111 West Stone Drive, Medical Office Plaza, Kingsport, TN 37660. The new location will consist of approximately 1,356 square feet of space on the first floor of a medical office building presently under construction and will contain two (2) procedure rooms. The services provided will be in the area of Bronchoscopy, Pleural Biopsy, and Thoracentesis. No major medical equipment is involved in this relocation. \$ 423,032.00</p>
<p>Solutions of Savannah, Inc. 2101 Wayne Road Savannah (Hardin County), TN 38372 CN0403-019 Contact Person: Belinda Dickson, Owner/Director Phone No. 731-926-3017</p>	<p>The establishment of a non-residential methadone treatment and the initiation of methadone treatment services. \$ 83,500.00</p>

NAME AND ADDRESS	DESCRIPTION
<p>Cumberland Medical Center 421 South Main Street Crossville (Cumberland County), TN 38555 CN0403-020 Contact Person: Jim McMackin, President Phone No. 931-456-7100</p>	<p>A replacement of the existing eight (8) bed obstetric unit with a sixteen (16) bed LDRP and nursery unit including a new two (2) private-room medical/surgical patient care unit through the renovation, expansion and build-out of existing shell space. The licensed bed complement will remain unchanged with one hundred eighty-two (182) general hospital beds and twenty (20) Level II nursing facility beds. No major medical equipment will be acquired and no new patient care services will be initiated as a result of this project. \$32,680,770</p>
<p>Baptist Memorial Hospital – Union City 1201 Bishop Street Union City (Obion County), TN 38261 CNO403-024 Contact Person: Mike Perryman, Administrator Phone No. 731-884-8601</p>	<p>The initiation of mobile positron emission tomography (PET) services one day per week. \$ 398,600.00+ Simultaneous Review filed by Dyersburg Regional Medical Center – CN0403-028</p>
<p>Southern Hills Surgery Center 510 Recovery Road Nashville (Davidson County), TN 37211 CN0403-025 Contact Person: John Wellborn, Consultant Phone No. 615-665-2022</p>	<p>The establishment of a multi-specialty ambulatory surgical treatment center (ASTC). The project will be located on a 3.1 acre site at 520 Recovery Road, Nashville, TN 37211 which adjoins the Southern Hills East ODC at 510 Recovery Road. The project is bounded by the ODC, Recovery Road, and Wallace Road. The project will be developed in leased space on the first floor of a new medical office building being constructed at that site occupying approximately 14,317 GSF of space, and will contain three (3) operating rooms and two (2) procedure rooms. \$ 10,072,685.00</p>
<p>Holston Valley Imaging Center 130 West Stone Drive Kingsport (Sullivan County), TN 37660 CN0403-027 Contact Person: Troy Clark, Director of Strategic Development Phone No. 423-230-8209</p>	<p>The establishment of an outpatient diagnostic center (ODC), the acquisition of a magnetic resonance imaging (MRI) and computed tomographic (CT) scanning equipment, and the initiation of MRI services. \$ 10,565,662.70</p>
<p>Dyersburg Regional Medical Center 400 E. Tickle Street Dyersburg (Dyer County), TN 38024 CN0403-028 Contact Person: William H. West, Esq. Phone No. 615-726-5600</p>	<p>The initiation of mobile positron emission tomography (PET) services one day per week. \$424,000+ Filed as a Simultaneous Review with CN0403-024 Baptist Memorial Hospital – Union City</p>

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0080 - Department of Agriculture - Regulatory Services - Emergency rules stopping the movement of certain varieties of nursery stock into the state of Tennessee which are derived from the state of California, chapter 0080-6-1 Rules and Regulations Governing Nurseries Dealers and Agents, 4 T.A.R. (April 2004) - Filed March 25, 2004; effective September 6, 2004 (03-08)
- 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)

PROPOSED RULES

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

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

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Occupational Safety and Health submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 8th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0655, and in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the amendments or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

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

The text of the proposed amendments is as follows:

AMENDMENT

Paragraph (2) of Rule 0800-1-1-.06 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 1, 2004” to “July 1, 2004”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2004 except as provided in Rule 0800-1-1-.07 of this chapter.

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

Paragraph (3) of Rule 0800-1-1-.07 Table Z-1-A – Limits For Air Contaminants is amended by changing the exposure limit for “Wood dust, Western red cedar” in the column titled “TWA – mg/m³” from a value of 5 mg/m³ to a value of 2.5 mg/m³, and removing the limit of 10 from the column titled “STEL – mg/m³” so that as amended the paragraph shall read:

- (3) TABLE Z - 1 - A — Limits For Air Contaminants.

Substance	CAS No.		TWA		STEL		Ceiling		Skin design -nation
	ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
Wood dust, Western red cedar			2.5						

Authority: T.C.A. §§4-3-1411, 50-3-105, 50-3-201, and 50-3-202.

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

Paragraph (2) of Rule 0800-1-6-.02 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 1, 2004” to “July 1, 2004”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2004 except as provided in Rule 0800-1-6-.03 of this chapter.

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

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

Paragraph (2) of Rule 0800-1-7-.01 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 1, 2004” to “July 1, 2004”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2004 except as provided in Rule 0800-1-7-.02 of this chapter.

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

Rule 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date in the second line from “January 1, 2004” to “July 1, 2004”, so that as amended the rule shall read:

0800-1-7-.02 EXCEPTIONS TO ADOPTION OF FEDERAL STANDARDS IN 29 CFR PART 1928. As of July 1, 2004, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201. Nashville, TN 37243-0659

The proposed rules set out herein were properly filed in the Department of State on the 21st day of April, 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 27th day of August, 2004. (4-13)

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PUBLIC NECESSITY RULES

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

- 1360 - Department of Health - Administrative Procedures Division - Public necessity rule concerning hearings, rule 1360-4-1-.06 Service of Notice of Hearing, 3 T.A.R. (March 2004) - Filed February 27, 2004; effective through August 10, 2004. (02-14)
- 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. (January 2004) - Filed December 29, 2003; effective though June 11, 2004. (12-23)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

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

The State of Tennessee received federal approval for a Statewide Home and Community Based Services Waiver for the Elderly and Disabled under Section 1915(c) of the Social Security Act, effective October 31, 2003, for a three year period. The Statewide Home and Community Based Services Waiver for the Elderly and Disabled is a project which provides services for a specified number of the aged and disabled Medicaid population who meet the Title XIX Medicaid financial criteria as well as State of Tennessee medical criteria for placement in a nursing facility. The services provided pursuant to the Waiver are provided in the Enrollee's home and consist of nursing and other personal care services of the same type as those provided in a nursing facility, enabling the Enrollee to remain at home rather than requiring admission to a nursing facility.

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

I have made a finding that these amendments are required to conform the current TennCare rules to reflect the status of the Statewide Home and Community Based Services Waiver for the Elderly and Disabled. Specifically, new definitions are added, expanded services are delineated and requirements for enrollment into the Waiver by use of a Personal Emergency Response System in lieu of 24 hour caregiver availability are established.

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

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

CHAPTERS 1200-13-1
GENERAL RULES**

Paragraph (3) of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by inserting the following subparagraphs as new definitions and relettering the remaining definitions appropriately:

- (r) Homemaker Services - services provided by a trained homemaker when the Enrollee is unable to perform such activities and when the individual regularly responsible for these activities is temporarily unable to perform such activities for the Enrollee, consisting of: general household activities and chores (e.g., sweeping, mopping, dusting, making the bed, washing dishes, personal laundry, ironing, mending, and meal preparation and/or education about the preparation of nutritious appetizing meals); assistance with maintenance of a safe environment; and errands essential to the Enrollee's care (e.g., grocery shopping, having prescriptions filled).
- (t) Inpatient Respite Care - services provided to individuals unable to care for themselves when there is an absence or need for relief of those persons normally providing the care. Respite services will be furnished on a short-term basis in a nursing facility or assisted care living facility, not to exceed nine (9) days per waiver year. The intent of Respite is to provide short-term relief for caregiver vacations and emergency situations that may involve the temporary loss of a caregiver (e.g. hospitalization, illness of another relative). This benefit is available only in the Statewide Home and Community Based Services Waiver for the Elderly and Disabled.
- (x) Personal Emergency Response Systems (PERS) - electronic devices which enable certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals. PERS services are limited to those individuals who are alone for significant parts of the day, who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. This benefit is available only in the Statewide Home and Community Based Services Waiver for the Elderly and Disabled.
- (cc) Statewide Home and Community Based Services Waiver for the Elderly and Disabled - the Home and Community Based Services waiver project approved for Tennessee by the Centers For Medicare and Medicaid Services to provide services to a specified number of Medicaid-

eligible individuals who reside in Tennessee, who are aged or disabled, and who meet the Medicaid criteria for placement in a Nursing Facility.

Paragraph (4) of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by adding the following new subparagraphs:

- (g) Homemaker Services. Homemakers shall meet TennCare standards for education and training.
- (h) Inpatient Respite Care.
- (i) Personal Emergency Response Systems. Personal Emergency Response Systems shall be provided, as specified in the Individual Plan of Care and Safety Plan, for Enrollees:
 - 1. Who receive daily caregiver services but who are alone for significant parts of the day and who would otherwise require extensive routine supervision; and
 - 2. Who, based on an assessment by the Administrative Lead Agency of the Enrollee's mental and physical capabilities, have the capability to effectively utilize such a system.

Subparagraph (f) of Paragraph (9) of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by inserting the parenthetical phrase "(requirement not applicable to the Statewide Home and Community Based Services Waiver for the Elderly and Disabled)" following the word "staff" so that as amended, the subparagraph shall read as follows:

- (f) supervision of support service staff (requirement not applicable to the Statewide Home and Community Based Services Waiver for the Elderly and Disabled);

Paragraph (10) Reimbursement of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by deleting the first paragraph in its entirety and replacing it with a revised first paragraph which shall read as follows.

(10) Reimbursement

In addition to covered services under the Medicaid Program provided pursuant to rule 1200-13-1-.03 of this Chapter, the services listed in paragraph (4) of this rule will be reimbursed. The Administrative Lead Agency for Home and Community Based Services Demonstration Projects, other than the Statewide Home and Community Based Services Waiver for the Elderly and Disabled, will be reimbursed on its per diem rate. The Administrative Lead Agency and service providers for the Statewide Home and Community Based Services Waiver for the Elderly and Disabled shall be reimbursed on a fee for service basis in the amount specified in their contracts. Under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals shall not exceed the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted as provided in rule 1200-13-1-.06(4)(a) of this Chapter. Pursuant to 42 CFR 435.726, the Administrative Lead Agency must make diligent effort to collect patient liability if it applies to a covered person. Pursuant to rule 1200-13-1-.05(8), the ALA is responsible for obtaining physician's certification and recertification for each Medicaid reimbursed covered person. Failure to obtain the recertification in the time and manner prescribed by federal regulation will result in a recoupment of all amounts paid by the Department during the time that certification has lapsed.

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

The Public Necessity rules set out herein were properly filed in the Department of State on the 28th day of April, 2004, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 10th day of October, 2004. (04-20)

RULEMAKING HEARINGS

THE DEPARTMENT OF COMMERCE AND INSURANCE - 0780 INSURANCE DIVISION

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 22nd day of June, 2004.

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

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

SUBSTANCE OF PROPOSED RULE

CHAPTER 0780-1-59 AFTERMARKET CRASH PARTS REGULATION

AMENDMENTS

Chapter 0780-1-59 Aftermarket Crash Parts Regulation is amended by deleting the chapter in its entirety and substituting the following language so that, as amended, the chapter shall read:

CHAPTER 0780-1-59 AFTERMARKET CRASH PARTS REGULATION

TABLE OF CONTENTS

0780-1-59-.01 Purpose	0780-1-59-.06 Severability
0780-1-59-.02 Definitions	0780-1-59-.05 Enforcement
0780-1-59-.03 Identification	0780-1-59-.04 Disclosure

0780-1-59-.01 PURPOSE

The purpose of this Chapter is to regulate the use of aftermarket crash parts by requiring disclosure when any use is proposed of an aftermarket, non-original equipment manufacturer’s crash part, and by requiring that the manufacturers of such aftermarket crash parts be identified.

Authority: T.C.A. §§56-2-301, 56-8-104(8) and 56-8-113.

0780-1-59-.02 DEFINITIONS

- (1) “Aftermarket crash part” means a replacement for any of the non-mechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels.
- (2) “Insurer” includes an insurance company and any person authorized to represent the insurer with respect to a claim.
- (3) “Non-OEM” means aftermarket crash parts not made for or by the manufacturer of the motor vehicle.

Authority: T.C.A. §§56-2-301, 56-8-104(8) and 56-8-113.

0780-1-59-.03 IDENTIFICATION

Any aftermarket crash part specified by an insurer for use in the repair of an insured’s or a third party claimant’s motor vehicle, supplied by a non-original equipment manufacturer for use in this State after the effective date of this regulation shall have affixed thereto or inscribed thereon the logo or name of its manufacturer. Such manufacturer’s logo or name shall be visible after installation whenever practicable.

Authority: T.C.A. §§56-2-301, 56-8-104(8) and 56-8-113.

0780-1-59-.04 DISCLOSURE

- (1) No insurer shall specify directly or indirectly the use of non-OEM aftermarket crash parts in the repair of an insured’s or third party claimant’s motor vehicle without disclosing the intended use of such parts to the insured or third party claimant. In all instances where non-OEM aftermarket crash parts are intended for use by an insurer:
 - (a) the written estimate shall clearly identify each such part.
 - (b) a disclosure document containing the following information in no smaller print than 10 point type or larger type shall appear on or be attached to the insured’s or third party claimant’s copy of the estimate: “This estimate has been prepared based on the use of one or more crash parts supplied by a source other than the manufacturer of your motor vehicle. Warranties applicable to these replacement parts are provided by the parts manufacturer or distributor rather than by the manufacturer of your vehicle.”
- (2) Non-OEM after market crash parts shall not be used on current year model or immediate prior year model motor vehicles without the express written permission of the insured or third party claimant.

Authority: T.C.A. §§56-2-301, 56-8-104(8) and 56-8-113.

0780-1-59-.05 ENFORCEMENT

Violations of this regulation shall be enforced through the Unfair Claim Settlement Practices Act, T.C.A. § 56-8-104(8), as provided in T.C.A. §§ 56-8-107 through 56-8-112.

Authority: T.C.A. §§56-2-301, 56-8-104(8) and 56-8-113.

0780-1-59-.06 SEVERABILITY

If any section or portion of a section of this regulation or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this regulation, or the applicability of such provision with a person shall not be affected thereby.

Authority: T.C.A. §§56-2-301, 56-8-104(8) and 56-8-113.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of April, 2004. (04-18)

**BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES - 1370
COUNCIL FOR LICENSING HEARING INSTRUMENT SPECIALISTS**

There will be a hearing before the Tennessee Board of Communications Disorders and Sciences' Council for Licensing Hearing Instrument Specialists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, and 63-17-203. 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 Johnson Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 18th day of June, 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 1370-2-.04, Preliminary Qualifications for Licensure, is amended by deleting part (3) (c) 1. but not its subparts and substituting instead the following language, so that as amended, the new part (3) (c) 1. shall read:

- (3) (c) 1. Out-of-state license issuance was based on passing the IHS exam, the IHS successor examination, the NBC-HIS exam, or any other exam approved by the Tennessee Council for Licensing Hearing Instrument Specialists.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-203, 63-17-209, and 63-17-210.

Rule 1370-2-.05, Procedures for Licensure, is amended by deleting subparagraphs (1) (g), (3) (g), (3) (m), and (4) (g) in their entirety and substituting instead the following language, so that as amended, the new subparagraph subparagraphs (1) (g), (3) (g), (3) (m), and (4) (g) shall read:

- (1) (g) An applicant shall submit with his application a “passport” style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.
- (3) (g) An applicant shall submit with his application a “passport” style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.
- (3) (m) The applicant shall direct the National Board for Certification in Hearing Instruments Sciences to submit evidence that he is currently certified by the NBC-HIS or the applicant shall direct the IHS or any other Council-approved examination provider to submit documentation that he has passed the written examination, pursuant to Rule 1370-2-.08.
- (4) (g) An applicant shall submit with his application a “passport” style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-203, 63-17-208, 63-17-209, and 63-17-210.

Rule 1370-2-.08, Examinations, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) Written Examination
 - (a) The Council adopts as its written licensure examination:
 - 1. the sanctioned examination of the International Hearing Society (IHS); or
 - 2. the International Hearing Society’s successor examination; or
 - 3. any other examination approved by the Council.
 - (b) The passing score for the sanctioned examination or successor examination of the International Hearing Society shall be the overall passing score as determined by the International Hearing Society.

- (c) The passing score for any other examination approved by the Council shall be shall be the overall passing score as determined by Council.
- (d) If the applicant is currently licensed or has been licensed in another state as a hearing instrument specialist, the applicant shall direct the National Board for Certification in Hearing Instruments Sciences to submit evidence that he is currently certified by the NBC-HIS, or the applicant shall direct the NBC-HIS or any other Council-approved examination provider to submit documentation that he/she has passed the written examination as provided in this rule.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-17-105, 63-17-203, 63-17-209, and 63-17-210.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of April, 2004 (04-02)

04-21

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Room 16 of the Legislative Plaza, 6th Avenue North, Nashville, Tennessee, at 9:00 a.m. C.D.T. on the 16th day June 2004.

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

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

SUBSTANCE OF PROPOSED RULES

Paragraph (3) of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by inserting the following subparagraphs as new definitions and relettering the remaining definitions appropriately:

- (r) Homemaker Services - services provided by a trained homemaker when the Enrollee is unable to perform such activities and when the individual regularly responsible for these activities is temporarily unable to perform such activities for the Enrollee, consisting of: general household activities and chores (e.g., sweeping, mopping, dusting, making the bed, washing dishes, personal laundry, ironing, mending, and meal preparation and/or education about the preparation of nutritious appetizing meals); assistance with maintenance of a safe environment; and errands essential to the Enrollee's care (e.g., grocery shopping, having prescriptions filled).

- (t) Inpatient Respite Care - services provided to individuals unable to care for themselves when there is an absence or need for relief of those persons normally providing the care. Respite services will be furnished on a short-term basis in a nursing facility or assisted care living facility, not to exceed nine (9) days per waiver year. The intent of Respite is to provide short-term relief for caregiver vacations and emergency situations that may involve the temporary loss of a caregiver (e.g. hospitalization, illness of another relative). This benefit is available only in the Statewide Home and Community Based Services Waiver for the Elderly and Disabled.
- (w) Personal Emergency Response Systems (PERS) - electronic devices which enable certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable “help” button to allow for mobility. The system is connected to the person’s phone and programmed to signal a response center once a “help” button is activated. The response center is staffed by trained professionals. PERS services are limited to those individuals who are alone for significant parts of the day, who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. This benefit is available only in the Statewide Home and Community Based Services Waiver for the Elderly and Disabled.
- (cc) Statewide Home and Community Based Services Waiver for the Elderly and Disabled - the Home and Community Based Services waiver project approved for Tennessee by the Centers For Medicare and Medicaid Services to provide services to a specified number of Medicaid-eligible individuals who reside in Tennessee, who are aged or disabled, and who meet the Medicaid criteria for placement in a Nursing Facility.

Paragraph (4) of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by adding the following new subparagraphs:

- (g) Homemaker Services. Homemakers shall meet TennCare standards for education and training.
- (h) Inpatient Respite Care.
- (i) Personal Emergency Response Systems. Personal Emergency Response Systems shall be provided, as specified in the Individual Plan of Care and Safety Plan, for Enrollees:
 1. Who receive daily caregiver services but who are alone for significant parts of the day and who would otherwise require extensive routine supervision; and
 2. Who, based on an assessment by the Administrative Lead Agency of the Enrollee’s mental and physical capabilities, have the capability to effectively utilize such a system.

Subparagraph (f) of Paragraph (9) of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by inserting the parenthetical phrase “(requirement not applicable to the Statewide Home and Community Based Services Waiver for the Elderly and Disabled)” following the word “staff” so that as amended, the subparagraph shall read as follows:

- (f) supervision of support service staff (requirement not applicable to the Statewide Home and Community Based Services Waiver for the Elderly and Disabled);

Paragraph (10) Reimbursement of rule 1200-13-1-.17 Home and Community Based Services Demonstration Projects is amended by deleting the first paragraph in its entirety and replacing it with a revised first paragraph which shall read as follows.

(10) Reimbursement

In addition to covered services under the Medicaid Program provided pursuant to rule 1200-13-1-.03 of this Chapter, the services listed in paragraph (4) of this rule will be reimbursed. The Administrative Lead Agency for Home and Community Based Services Demonstration Projects, other than the Statewide Home and Community Based Services Waiver for the Elderly and Disabled, will be reimbursed on its per diem rate. The Administrative Lead Agency and service providers for the Statewide Home and Community Based Services Waiver for the Elderly and Disabled shall be reimbursed on a fee for service basis in the amount specified in their contracts. Under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals shall not exceed the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted as provided in rule 1200-13-1-.06(4)(a) of this Chapter. Pursuant to 42 CFR 435.726, the Administrative Lead Agency must make diligent effort to collect patient liability if it applies to a covered person. Pursuant to rule 1200-13-1-.05(8), the ALA is responsible for obtaining physician's certification and recertification for each Medicaid reimbursed covered person. Failure to obtain the recertification in the time and manner prescribed by federal regulation will result in a recoupment of all amounts paid by the Department during the time that certification has lapsed.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of April, 2004. (04-21)

DEPARTMENT OF HEALTH - 1200
DIVISION OF EMERGENCY MEDICAL SERVICES

There will be a hearing before the Division of Emergency Medical Services to consider the promulgation of amendments of rules pursuant to T.C.A. §§ 68-140-504, 68-140-506, 68-140-507, 68-140-508, 68-140-509 and 68-140-517. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building, Ground Floor, located at 425 Fifth Avenue North, Nashville, Tennessee at 10:00 a.m., Central Daylight Time, on the 17th of June, 2004.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Health, Division of Emergency Medical Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date or the date the party plans to review such filings, to allow time for the Division of Emergency Medical Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the department's ADA coordinator at the Andrew Johnson Tower, 11th Floor, 710 James Robertson Parkway, Nashville, TN 37243-0675, 615-741-6350.

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Paragraph (4) of Rule 1200-12-1-.03 Emergency Medical Services Equipment and Supplies, is amended by adding the following language as a new subparagraph (f):

- (f) Pulse oximeter with sensors for use with adult and pediatric patients.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-505, and 68-140-507.

Rule 1200-12-1-.04 Emergency Medical Technician (EMT), is amended by adding the following language as new paragraphs (10) and (11):

(10) Retirement of an EMS professional license

- (a) A currently licensed EMT or EMT-P who wishes to permanently retire his or her license shall submit the following information to the Division:
 1. A properly completed permanent retirement affidavit form to be furnished by the Division.
 2. Other documentation which may be required by the Division pursuant to this purpose.
- (b) Any EMS professional who has filed the required information for permanent retirement of his or her license shall be permitted to use the appropriate title:
 1. For emergency medical technicians, EMT Retired or EMTR.
 2. For emergency medical technician –paramedics, EMT-Paramedic Retired, or EMT-PR

(11) Reinstatement of a retired EMS professional license.

- (a) A reinstatement applicant whose license has been retired two years or less may reinstate his or her license by completing the following requirements:
 1. Payment of all past due renewal fees, reinstatement, and state regulatory fees pursuant to Rule 1200-12-1-.06; and
 2. Submission of documentation to prove satisfactory health and good character.
- (b) If a reinstatement applicant's license has expired or been retired for two years or more, an applicant must complete refresher training requirements and written and practical examinations that have been approved by the board for the level of licensure for which reinstatement is applied.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-508, 68-140-509 and 68-140-518.

Rule 1200-12-1-.06 Schedule of Fees, is amended by deleting subparagraph (4)(b) and substituting instead the following language, so that as amended the new subparagraph (4)(b) shall read:

(b) Renewal fees for all classes of licenses in (a)	\$48.00
1. Renewal examination fee (first attempt)	\$100.00
2. Renewal examination fee (repeated attempt)	\$100.00

Authority: T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-505, 68-140-506, 68-140-508, and 68-140-517.

Rule 1200-12-1-.06 Schedule of Fees, is amended by adding the following language as a new subparagraph (4)(g):

(g) Application fee for license by interstate reciprocity	\$100.00
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Authority: T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-505, 68-140-506, 68-140-508, and 68-140-517.

Rule 1200-12-1-.07 Insurance Coverage is amended by deleting the existing language in its entirety, and substituting instead the following language, so that as amended the rule shall read:

- (1) All ambulance services and invalid vehicle services operating pursuant to Chapter 140 of Title 68, Tennessee Code Annotated shall maintain for each vehicle owned, and/or operated as an ambulance or invalid vehicle, insurance for vehicular liability coverage of not less than the minimum limits which are set forth in T.C.A. §29-20-403.
- (2) All emergency medical services, first response units and ambulance services shall maintain coverage for negligence (malpractice) or professional liability of not less than three hundred thousand dollars (\$300,000) per occurrence.
- (3) Each ambulance service and invalid vehicle transport service shall maintain general or professional liability coverage for claims arising in transfer of persons to and from their conveyance, and during transport of not less than three hundred thousand dollars (\$300,000) per occurrence.
- (4) Evidence that such insurance is in force and effect shall be furnished to the Division of Emergency Medical Services by the insurer upon application, license renewal, and upon request.
 - (a) Each service shall list the insurance agent, address, telephone number and each carrier and each policy number for insurance required under paragraphs (1), (2), and (3) upon initial and renewal applications, and shall inform the Division of any changes in agent or carrier.
 - (b) Each service shall have the insurance agent and/or carrier submit to the Division verification of coverage in the form of either a notarized affidavit or such certificate or insurance form as shall be approved by the department of commerce and insurance or the department of health.
 - (c) Local government or state entities maintaining coverage under Governmental Tort Liability limits or self insurance programs may demonstrate compliance by submitting to the Division a letter verifying such coverage or alternate limits applicable to paragraphs (1), (2), and (3) attested by the chief risk management official, listing the address and telephone number and claims procedures.

- (5) Air ambulance services shall comply with liability coverage required by the Federal Aviation Administration for air taxi operators, and malpractice and professional liability coverage at not less than three hundred thousand dollars (\$300,000) per occurrence. Air ambulance services shall verify coverage as described in paragraph (4).

Rule 1200-12-1-.16 Emergency Medical First Responders is amended by adding the following language as new subpart shall (2)(b)(1)(iv):

- (iv) First Responders and Emergency Medical Technicians participating in a recognized first responder organization within the community EMS system may, upon completion of the approved training, periodic review training, and concurrent quality assurance of the local EMS system Medical Director, utilize a dual-lumen airway device (such as the Combitube or Pharyngeal Tracheal Lumen airway) that has been approved by the EMS Board.

Authority: §§4-5-202; 4-5-204, 68-140-504, 68-140-506, 68-140-508, and 68-140-517.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2004. (04-25)

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

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-125. 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 8th day of July, 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

Rule 1200-6-3-.09 Quality Control, is amended by deleting subparagraph (25) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (25) (a) shall read:

- (25) (a) For automated hematology testing systems, excluding coagulation, the laboratory must include two (2) levels of controls for each twenty-four (24) hours of operation.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, and 68-29-125.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of April, 2004. (04-08)

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
ADMINISTRATIVE PROCEDURES DIVISION**

There will be hearings before the Tennessee Department of Human Services to consider the promulgation of amendments to its rules pursuant to T.C.A. §§ 4-5-201 et seq. and 71-1-105(12). The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Second Floor Boardroom, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 1:30 P.M. Central Time on Tuesday, June 22, 2004; 7th Floor Conference Room A, State Office Building, at 531 Henley Street, Knoxville, Tennessee 37902 at 1:30P.M. Eastern Time on Wednesday June 23, 2004; Second Floor Auditorium, Donnelley J. Hill State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 1:30 P.M. Central Time on Friday, June 25, 2004.

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

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

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-1
INTRODUCTION**

AMENDMENTS

Rule 1240-5-1-.01 Grievances, is amended by deleting the rule in the entirety, and by substituting the following new language, so that as amended, the rule shall read:

1240-5-1-.01 GRIEVANCES.

- (1) When an applicant for or recipient of assistance or services, is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, he/she has the right to timely appeal for a fair hearing by an impartial Department official except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05 (9), provided that actions taken pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.
- (2) Additionally, when any party to an administrative action for child support or related administrative enforcement is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, and that is listed in T.C.A. §§ 36-5-1001 and 36-5-1002, he/she has the right to timely appeal for a fair hearing by an impartial Department official, provided that actions taken pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.

Authority: T.C.A. §§4-5-101; 4-5-301; 36-5-1001 and 36-5-1002.

Rule 1240-5-1-.02 Agency Rule-Making, is amended by deleting the rule in the entirety, and by substituting the following new language, so that as amended, the rule shall read:

1240-5-1-.02 AGENCY RULE-MAKING.

- (1) The rules of procedure and practice to determine eligibility for the programs of assistance and services provided by the Tennessee Department of Human Services are not valid or effective against any person or party, nor may they be invoked by the agency for any purpose, until all of the requirements for rulemaking as set forth by the Tennessee Uniform Administrative Procedures Act (as amended) have been met.
- (2) "Rule" means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. "Rule" includes the amendment or repeal of a prior rule, but does not include:
 - (a) Statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public;

- (b) Declaratory order issued pursuant to T.C.A. § 4-5-223;
- (c) Intra-agency memoranda;
- (d) General policy statements which are substantially repetitious of existing law.

Authority: T.C.A. § 4-5-207.

Rule 1240-5-1-.03 Legal Base, is amended by deleting paragraphs (1) through (4) in the entirety, and by substituting the following new language, so that as amended, paragraphs (1) through (4) shall read:

1240-5-1-.03 LEGAL BASE.

- (1) Tennessee’s family assistance statutes; the Federal statutes of the Food Stamp Act; the Social Security Act (which includes Public Assistance Temporary Assistance to Needy Families (TANF), Medicaid, and Social Services); the Services for the Blind Statute at 20 U.S.C.A. §107b(6) and 34 CFR § 395 et seq.; the Rehabilitation Act of 1973, as amended, 29 USCA §§ 701 et seq., 720 et seq., and 722 et seq. and 34 CFR 361. et seq.; and Tennessee Child Support statutes require that there be provisions for appeals and fair hearings for applicants and recipients of assistance and services provided by the Department. The Tennessee Department of Human Services is responsible for fulfillment of Hearing provisions in the assistance and services programs that provide for the hearings before the State Department. Such hearings shall meet the due process standards set forth in the U.S Supreme Court decision in *Goldberg v. Kelly*, 397 US 254 (1970) and the standard set forth in the Federal regulations.
- (2) Title VI of the Civil Rights Act of 1964, 42 USCA § 2000d, prohibits discrimination in the provision of assistance or services to applicants, recipients, or beneficiaries because of their race, color, or national origin.
- (3) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-301 et seq., requires the use of uniform procedures for the conduct of hearings on appeals held by all state agencies of Tennessee.
- (4) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-101 et seq., provides for the use of uniform procedures for agency rulemaking.

Authority: T.C.A. §§ 4-5-101 and 4-5-301; T.C.A. §§ 36-5-1001 and 1002; and T.C.A. §§ 71-3-151 et seq.; 7 USCA §§ 2014 and 2015; 20 § USCA 107b; 29 USCA §§ 701 et seq., 720 et seq. and 722 et seq.; 42 USCA § 601 et seq.; 42 USCA § 1396; 34 CFR §§ 395 et seq. and 34 CFR §§ 361 et seq.

Rule 1240-5-1-.04 Administrative Review In Vocational Rehabilitation Services, is amended by deleting the current language in its entirety, and by substituting a new rule to be titled “Scope”, so that as amended, the rule shall read:

1240-5-1-.04 SCOPE.

- (1) Subject to any superseding Federal or State law, these rules shall govern contested case proceedings before the Department of Human Services and will be relied upon by administrative judges/hearing officers in all contested cases utilizing administrative judges/hearing officers of the Department of Human Services

- (2) Any procedural provision of these rules, which is not subject to a superseding Federal or State law, may be suspended where clearly warranted in the interest of justice.
- (3) In any situation that arises that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

Authority: *T.C.A. §4-5-219.*

Rule 1240-5-1-.04 is amended to become Rule 1240-5-1-.05 and as amended, the rule shall read:

1240-5-1-.05 ADMINISTRATIVE REVIEW IN VOCATIONAL REHABILITATION SERVICES.

- (1) Any applicant or eligible individual who is dissatisfied with any decision made by any staff of the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically, the Division of Rehabilitation Services, concerning the furnishing or denial of rehabilitation services may request a review of the decision by means of an Informal Administrative Review, Mediation, or a Fair Hearing in accordance with the Federal Rehabilitation Act of 1973, as amended, 29 USCA § 722 et seq.
- (2) The individual must be made aware of his/her rights as follows:
 - (a) the right to an Informal Administrative Review
 - (b) the right to pursue mediation
 - (c) the availability of the Client Assistance Program (CAP)
 - (d) the right to a formal fair hearing
- (3) Notification of these rights and the availability of CAP should be given:
 - (a) at the time of application;
 - (b) at the time the individual is assigned to a category in Tennessee's order of selection, provided that Tennessee has established an order of selection under 34 C.F.R. § 361.36;
 - (c) when the Individualized Plan for Employment (IPE) is developed; and
 - (d) when services are being reduced, suspended or terminated.
- (4) During any appeal process (Informal Administrative Review, Mediation or Fair Hearing), the applicant or eligible individual must be advised that he/she has the right to be represented by counsel or other advocate selected by the Appellant and with an opportunity to submit evidence and other information that supports his/her position.
- (5) Continuance or Cessation of Services During Reviews and Appeals.

- (a) When an applicant or eligible individual requests an Informal Administrative Review, Mediation or Fair Hearing of a decision to cease a service, there shall not be a suspension, reduction or termination of services being provided to an applicant or eligible individual, including evaluation and assessment services and Individualized Plan for Employment (IPE) development, pending a final determination of the Fair Hearing, Mediation or Informal Administrative Review process unless the individual, or as appropriate, the individual's representative, so requests or the Rehabilitation Services Division has evidence that the service(s) at issue were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative.
- (6) An appeal of an Informal Administrative Review, Mediation or a request for a Fair Hearing will be accepted only if filed within the required time limit listed in this section, unless good cause can be shown as to why the appeal or request for a Fair Hearing could not be filed within the required time limit.
- (7) Informal Administrative Review.

An Informal Administrative Review is an informal procedure through which the Division provides an opportunity to an applicant or eligible individual of Vocational Rehabilitation Services and/or his/her representative, to express and seek resolution for his/her dissatisfaction with an action of the Division.

- (a) The individual/applicant must file a request for an Informal Administrative Review, orally or in writing, within thirty (30) calendar days of the date on the notice of the contested action.
- (b) Within five (5) working days of the request in 1240-5-1-.05(7)(a), except when disciplinary sanctions are imposed against the applicant/individual in a Division owned or operated facility, a supervisor shall contact the applicant/individual or as appropriate his/her representative to schedule the Informal Administrative Review. The applicant or individual or, as appropriate, his/her representative shall be informed in writing of the scheduled review date and site. When disciplinary sanctions are imposed against the applicant/individual in a Division owned or operated facility the supervisor shall contact the applicant/individual or, as appropriate, his/her representative immediately to schedule the review.
- (c) The Informal Administrative Review shall be held within fifteen (15) working days from the date of the original request, and within twenty-four (24) hours of the date of the receipt of notice for disciplinary sanctions in a Division owned or operated facility.
- (d) Informal Administrative Reviews are held by the regional supervisory staff of the Division. An Informal Administrative Review shall be conducted during regular agency working hours and located at a time and place convenient to the individual and staff.
- (e) The recommendation of the review shall be in writing and address all issues involved. Within ten (10) working days of the review, all parties involved in the review shall receive written notice of the recommendation.
- (f) Applicants and individuals can be served more quickly using the Informal Administrative Review process. However, under no circumstance should the Informal Administrative Review process be used to deny, delay, discourage, or interfere with the individual exercising his/her right to pursue Mediation or the formal Fair Hearing process. The Division shall make every effort to resolve individual complaints at the Informal Administrative Review Process level.

- (g) Applicants and individuals may be represented by the representative or legal counsel of his/her choosing.
- (8) Mediation.
- (a) Mediation may be requested orally or in writing at any point as a part of due process procedures prior to a formal Fair Hearing. Mediation may be requested without first completing the Informal Administrative Review. Mediation is voluntary on the part of both parties (the Division or the individual/applicant). Mediation shall not be used as a process to deny or delay the right of an individual to a Fair Hearing or any other rights. The State shall bear the cost of the Mediation process with the exception of the costs related to the representation of an applicant or eligible individual.
 - (b) Requirements for Mediation include the following:
 - 1. A qualified and impartial mediator as defined in 34 CFR § 361.5(b)(43) must conduct the Mediation process. The applicant/individual has the right to choose the mediator, as available, from a list of mediators maintained by the Division of Rehabilitation Services.
 - 2. Mediation should be scheduled within seven (7) working days of the request for mediation, subject to availability of a suitable mediator. The actual mediation should take place within fifteen (15) working days of the request, subject to availability of a suitable mediator.
 - 3. The mediation should take place at a location convenient to all parties.
 - 4. Discussions that take place during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing under 1240-5-1-.05(9) of these rules or civil proceeding under 1240-5-1-.05(10). The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.
 - 5. Any agreement reached by the parties shall be set forth in a written mediation agreement, but if agreement is not reached, the applicant/individual has the right to proceed to a Fair Hearing.
 - 6. Applicants and individuals may be represented by the representative or legal counsel of his/her choosing.
- (9) Fair Hearing.
- (a) A Fair Hearing is a formal procedure whereby an applicant or individual who is dissatisfied with any decision made by the Department of Human Services Vocational Rehabilitation Services Division staff concerning the furnishing or denial of services is provided a formal hearing by an Impartial Hearing Officer (IHO) to review the determination.
 - (b) An individual may request a Fair Hearing orally, or by formally filing Form HS-0008 with the counselor, the regional/district/local supervisor's office, or facility administrator. The date the request was made must be documented on Form HS-0008 by Division staff.
 - (c) The applicant/individual or his/her representative is allowed thirty (30) calendar days after the date of the Informal Administrative Review Written Recommendation or Mediation to request a Fair Hearing, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit.

- (d) When the applicant or individual elects not to utilize the Informal Administrative Review or Mediation process, the request for the Fair Hearing must be filed within thirty (30) calendar days of the notification by the Division to the applicant for, or recipient of services, of the contested action, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit. Time is measured from the date of the notice.
- (e) The requirements for the fair hearing are as follows:
- 1 The Fair Hearing is to be conducted by an Impartial Hearing Officer (IHO) as defined in 34 CFR § 361.5(b)(25) and is to be held within sixty (60) days of a request by the applicant or individual, unless informal resolution is achieved prior to the sixtieth (60th) day or the parties agree to a specific extension of time. The sixty-day (60) period begins when the request is made orally or in writing. In either event, the date that the request is made for a Fair Hearing must be documented on Form HS-0008.
 - 2 The applicant or individual or, if appropriate, the individual's representative shall be afforded an opportunity to present evidence, information, and witnesses to the Impartial Hearing Officer; to be represented by counsel or other appropriate advocate; and to examine/cross examine all witnesses and other relevant sources of information and evidence.
 - 3 The Impartial Hearing Officer shall make a decision based on the provisions of the approved State Plan and the Rehabilitation Act of 1973, as amended, 29 USCA § 701 et seq.; Federal Vocational Rehabilitation regulations at 34 CFR § 361 et seq. and State Regulations; and policies that are consistent with the Federal requirements. The Impartial Hearing Officer shall provide the decision in writing, to the applicant or individual, or as appropriate to his/her representative, and to the Assistant Commissioner of the Rehabilitation Services Division. The Impartial Hearing Officer's decision, including findings and grounds for the decision, shall be entered within thirty (30) calendar days of the date of the hearing.
 - 4 The Division of Rehabilitation Services shall maintain a list of qualified Impartial Hearing Officers who are knowledgeable in law (including regulations) relating to the provision of Vocational Rehabilitation services. The names of the Impartial Hearing Officers will be identified jointly by the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically, the Rehabilitation Services Division and members of the State Rehabilitation Council (SRC).
 - 5 The selection of the Impartial Hearing Officer to hear a particular case will be done on a random basis by the Commissioner's Designee for Hearings and Appeals or by agreement between the Assistant Commissioner of the Rehabilitation Services Division and the applicant or eligible individual.
 - 6 The Impartial Hearing Officer's decision is final, except either party that is dissatisfied with the decision of the Impartial Hearing Officer may request, in writing, a review of the decision of the Impartial Hearing Officer within twenty (20) calendar days after entry and mailing of the decision. If the twentieth (20th) day falls on a weekend or holiday, the request must be filed by the following workday. The Commissioner, or the Commissioner's Designee in the Department of Human Services' Hearings and Appeals Unit will conduct the review of the decision of the Impartial Hearing Officer. The Commissioner cannot delegate the responsibility to make the independent final decision to any officer or employee of the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically the Rehabilitation Services Division, including the Assistant Commissioner of the Rehabilitation Services. During the Commissioner/

Commissioner's Designee's review each party shall be provided an opportunity for submission of additional evidence and information relevant to a final decision concerning the matter under review.

7. The Commissioner/Commissioner's Designee in the Hearings and Appeals Unit may not overturn or modify the decision, or part of a decision, of an Impartial Hearing Officer that supports the position of the individual unless it is concluded that, based on clear and convincing evidence, the decision of the Impartial Hearing Officer is clearly erroneous because it is contrary to the approved State Plan; the Rehabilitation Act, as amended, 29 USCA § 701 et. seq.; Federal Vocational Rehabilitation Regulations; State Regulations or policies that are consistent with Federal requirements identified in Title I of the Rehabilitation Act, as amended.
8. Within thirty (30) days of the individual's request for administrative review of the Impartial Hearing Officer's decision as described in 1240-5-1-.05(9)(e)6, the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit, shall render an independent final decision following a review of the entire hearing record and provide a full report in writing of the decision, including the findings and the statutory regulation or policy grounds for the decision to the applicant or individual or, if appropriate, the individual's representative and to the Vocational Rehabilitation Division staff involved in the Fair Hearing.
9. Reasonable time extensions may be provided for good cause shown at the request of a party or at the request of both parties.
10. The Impartial Hearing Officer's decision will be the final agency decision, if there is not a request for administrative review of the Impartial Hearing Officer's decision to the Commissioner/Commissioner's Designee within twenty (20) calendar days of the entry and mailing of the Impartial Hearing Officer's decision as provided in 1240-5-1-.05(9)(e)6 above.

(10) Petition for Judicial Review In Chancery Court Or Civil Action.

- (a) Any party who is aggrieved by a decision of the Impartial Hearing Officer may seek relief as follows:
 1. A party aggrieved by the decision of the Impartial Hearing Officer may file a petition for judicial review in Chancery Court under T.C.A. § 4-5-322 within sixty (60) days after the Impartial Hearing Officer's decision becomes final; or
 2. A party aggrieved by the decision of the Impartial Hearing Officer may file a petition for judicial review in Chancery Court under T.C.A. § 4-5-322 within sixty (60) days of the entry and mailing of the Commissioner/Commissioner's Designee's independent final administrative review decision of the Impartial Hearing Officer's decision, where the individual sought review of the Impartial Hearing Officer's decision as provided in 1240-5-1-.05(9)(e)6; or
 3. A party aggrieved by the decision of the Impartial Hearing Officer may file a civil action within the time period provided for bringing a civil action after the entry and mailing of the Commissioner/Commissioner's Designee's independent final administrative review decision of the Impartial Hearing Officer's decision, where the individual sought review of the Impartial Hearing Officer's decision as provided in 1240-5-1-.05(9)(e)6. The civil action may be brought in any State court of competent jurisdiction or United States district court of competent jurisdiction without regard to the amount of controversy.

- (b) The decision of the Impartial Hearing Officer, or if reviewed, the independent final administrative review decision of the Commissioner/Commissioner's Designee shall be implemented regardless of whether a party has filed a petition for judicial review in Chancery Court as provided in 1240-5-1-.05(10)(a)1 or 2 above or a civil action as provided in 1240-5-1-.05(10)(a)3.
- (c) In a civil action for judicial review, as provided in 1240-5-1-.05(10)(a)3 above, the Court:
1. Receives the records related to the formal Fair Hearing process and the Commissioner/Commissioner's Designee's administrative review of the Impartial Hearing Officer's decision;
 2. Hears additional evidence at the request of a party; and
 3. Bases its decision on the preponderance of the evidence, granting the relief the Court determines to be appropriate under the facts and the law.
- (11) Vocational Rehabilitation Services fair hearings shall be conducted in conformity with the Federal Rehabilitation Act, 29 USCA § 722(c), 34 C.F.R. §361.57, and the Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. § 4-5-301 et seq. State Rule 1240-5-1-.05 shall govern the procedures for review of service decisions in the Vocational Rehabilitation Program. Any conflict between the Department of Human Services rules governing contested case proceedings and the Tennessee Uniform Administrative Procedures Act, as amended, shall be controlled by the Department of Human Services Rules at 1240-5-1-.05.

Authority: T.C.A. §§ 4-5-105; 71-1-105; 49-11-601 et seq. ; 29 USCA § 701 et seq.; 29 USCA § 705; 29 USCA § 720 et seq.; and 29 USCA §722(c); 34 CFR §§ 361.5 and 361.57; and 66 FR 4380.

CHAPTER 1240-5-3 FAIR HEARING REQUESTS

AMENDMENTS

Rule 1240-5-3-.03 Time Limit For Filing An Appeal, is amended by deleting Subparagraph (a), under Paragraph (1) in the entirety, and by substituting the following language, so that as amended, Paragraph (1), Subparagraph (a), shall read:

- (1) The following time limits will be allowed for appeals:
- (a) Vocational Rehabilitation applicants and recipients or individuals acting in their behalf, as set forth in Tennessee State Rule 1240-5-1-.05, will be allowed thirty (30) calendar days after the date of the Informal Administrative Review finding to appeal any action of the Department with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit. If the applicant/recipient or individual's representative elects not to utilize the Informal Administrative Review, the appeal as specified in State Rule 1240-5-1-.05 must be filed within thirty (30) calendar days of the action of the Department with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit.

Appeals related to the Randolph Sheppard or the Tennessee Business Enterprises Program will be accepted only if they are filed within the time limits specified in State Rule 1240-6-11-.02 and should be appealed as set forth in that rule.

Authority: *T.C.A. §§ 71-1-105(14) and 71-4-508; 20 USCA §§ 107d-1 and 107b(6); 29 USCA § 722(c); 34 CFR § 361.57; and 34 CFR §§ 395.4. and 395.13.*

CHAPTER 1240-5-8 THE FINAL ORDER

AMENDMENTS

Rule 1240-5-8-.01 Time Limitation, is amended by deleting Paragraph (1), Subparagraphs (a), (b) and (c), and by substituting the following language, so that as amended, Paragraph (1), Subparagraphs (a), (b) and (c) shall read:

- (1) Tennessee State Rule 1240-5-1-.05 sets forth the time limits for processing appeals for Vocational Rehabilitation Services. State Rule 1240-6-11-.02 sets forth the time limits for processing appeals related to the Randolph Sheppard or the Tennessee Business Enterprises Program. The maximum time limit for processing appeals is ninety (90) days for the Family Assistance and Social Services Programs, except that Food Stamp Appeals will be processed within sixty (60) days. The postponement of the scheduled hearing in Food Stamp Appeals shall not exceed thirty (30) days, and the time limit for processing the appeal shall be extended because of:
 - (a) Illness of the appellant;
 - (b) Delay in obtaining medical evidence; or
 - (c) Because of circumstances beyond the control of the appellant or the Department.

Authority: *T.C.A. §§ 4-5-301, 71-1-105(14) and 71-4-508; 29 USCA § 722(c); 20 USCA §§ 107d-1 and 107b(6); 42 CFR § 431.244; 45 CFR § 205.10(a)(16); 7 CFR §§ 273.15(c); 34 CFR § 361.57(b)(1)(i), (e)(1) and (e)(3)(ii), and (g); 34 CFR §§ 395.4. and 395.13.*

Rule 1240-5-8-.03 The Final Order, is amended by inserting a new Paragraph to be numbered (4), so that as amended, the new Paragraph (4) shall read:

- (4) Tennessee State Rule 1240-5-1-.05 sets forth the process for final orders in Vocational Rehabilitation Services Appeals.

Authority: *T.C.A. § 4-5-314; 29 USCA § 722(c); and 34 CFR § 361.57(e)(4) and (g).*

Rule 1240-5-8-.06 Recovery When The Final Order Upholds The Local Office, is amended to update the Authority under the rule and to insert the State Rule reference for Vocational Rehabilitation Services Appeals, so that as amended, the rule and the Authority shall read:

1240-5-8-.06 RECOVERY WHEN THE FINAL ORDER UPHOLDS THE LOCAL OFFICE. When the final order upholds the local office, any benefits due to continuation of assistance or services pending the hearing decision will be subject to recovery according to the procedures of the Department for recovering benefits, except as relates to Vocational Rehabilitation Services appeals. Vocational Rehabilitation services are subject to recovery where services were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative as provided in State Rule 1240-5-1-.05(5)(a).

Authority: T.C.A. § 4-5-317; 45 CFR § 205.10(a)(6)(i); 7 CFR § 273.15(s)(2); 42 CFR §§ 431.230(b) and 42 CFR 431.231(b).

CHAPTER 1240-5-9 RECONSIDERATION

AMENDMENTS

Rule 1240-5-9-.05 Administrative Recourse When Aggrieved By Final Order, is amended by deleting the rule in its entirety, and by substituting the following language, so that as amended, the rule shall read:

1240-5-9-.05 ADMINISTRATIVE RECOURSE WHEN AGGRIEVED BY FINAL ORDER. When an individual being provided Vocational Rehabilitation Services under an Individualized Plan of Employment (IPE) is dissatisfied with the Impartial Hearing Officer's decision resulting from the Fair Hearing as set forth in Tennessee State Rule 1240-5-1-.05(9), the individual may request review as provided in Rule 1240-5-1-.05(9) and (10).

Authority: 29 USCA § 722(c); 34 CFR § 361.48 and 34 CFR § 361.57(e)(4) and (g).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2004. (04-24)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-101, 63-6-204 and 63-6-214. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 17th day of June, 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

0880-2-.21 Office Based Surgery

0880-2-.21 OFFICE BASED SURGERY. A license to practice medicine issued pursuant to T.C.A. § 63-6-204 authorizes the holder to perform surgery. To the extent that any licensee performs surgery in his or her office rather than a hospital, abortion clinic, or ASTC, that licensee, or the governing body of the entity lawfully authorized to practice medicine wherein the surgery is to be performed, shall comply with these rules.

- (1) General Statement and Precaution - The Board does not encourage the use of a physician's office for the performance of Level III surgeries. However, it is recognized that the law does not prohibit such surgeries from taking place there. Nothing in this rule relieves the physician of the responsibility for making the medical determination that the office is an appropriate forum for the particular procedure(s) to be performed considering always the condition of the patient for whom the procedure(s) are intended. The Board will always judge the decision to perform surgery in the office setting based upon what was in the patient's best interest and through strict application of these rules.
- (2) Intent and Application
 - (a) Intent – It is not the intent of these rules to circumvent the law and rules and regulations governing ambulatory surgical treatment centers. The intent of these rules is to provide physicians, who perform Level I, II, IIA, and III surgeries as part of a medical practice whose focus is on provision of medical services and procedures that are not related to surgery (and procedures and services incidental thereto), an option to provide on-site surgical and surgical related services that are within the scope of the physician's specialty and training and in the best interest of the patient.
 - (b) Application – These rules do not apply to physicians or the governing body of entities lawfully authorized to practice medicine whose practice location(s) has as its primary purpose the provision of Level I, II, IIA and III surgical or surgical preparatory services and/or procedures. Those types of practice locations must comply with all laws, rules and regulations applicable to ambulatory surgical treatment centers including rules 0720-3-.01 through .07.
- (3) Definitions
 - (a) AAAASF - American Association for the Accreditation of Ambulatory Surgical Facilities.
 - (b) AAHC - Accreditation Association for Ambulatory Healthcare.
 - (c) ACLS (Advanced cardiac life support) - A current certification that means a person has successfully completed an advanced cardiac life support course offered by a recognized accrediting organization in accordance with American Heart Association (AHA) guidelines.

- (d) ASA - American Society of Anesthesiologists.
- (e) ASTC - An ambulatory surgical treatment center licensed by the Department of Health Division of Health Care Facilities.
- (f) Board - The Tennessee Board of Medical Examiners.
- (g) BCLS (Basic Cardiac Life Support) - A current certification that means a person has successfully completed a basic cardiac life support course offered by a recognized accrediting organization in accordance with AHA guidelines.
- (h) Conscious Sedation/Moderate Sedation/Sedation-Analgesia - A drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are usually required to maintain a patent airway, and spontaneous ventilation is usually adequate. Cardiovascular function is usually maintained.
- (i) Deep Sedation - A drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients often require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.
- (j) General Anesthesia - A drug induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug induced depression of neuromuscular function. Cardiovascular function may be impaired.
- (k) Health Care Facilities Reporting System - The system located within the Department of Health Division of Health Care Facilities organized for receipt an analysis of "unusual incident" reports from licensed health care facilities. The contact address is Unusual Incident Reporting Unit, Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508.
- (l) Hospital - A hospital licensed by the Department of Health Division of Health Care Facilities.
- (m) JCAHO - Joint Commission on Accreditation of Healthcare Organizations.
- (n) PALS (Pediatric Advanced Life Support) - A current certification that means a person has successfully completed a pediatric advanced life support course offered by a recognized accrediting organization in accordance with AHA guidelines.
- (o) Physician - A person licensed to practice medicine and surgery pursuant to Tennessee Code Annotated Title 63, Chapters 6 and 9.
- (p) Regional Block
 - 1. Minor Regional Block or Minor Regional Anesthesia - The administration of local anesthetics to interrupt nerve impulses in a digit, extremity, or other minor region of the body, including but not limited to digital blocks and upper and lower extremity plexus blocks.

2. Major Regional Block or Major Regional Anesthesia - The administration of local anesthetic agents to interrupt nerve impulses in a major region of the body, including but not limited to spinal blocks, epidural blocks, caudal blocks, and intravenous regional anesthetic.
- (q) Surgery - The excision or resection, partial or complete, destruction, incision or other structural alteration of human tissue by any means (including through the use of lasers) performed upon the body of a living human for purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering, or for aesthetic, reconstructive or cosmetic purposes, to include, but not limited to; incision or curettage of tissue or an organ; suture or other repair of tissue or organ, including a closed or an open reduction of a fracture; extraction of tissue, including premature extraction of products of conception from the uterus; and insertion of natural or artificial implants. Surgery does not include the suturing of minor lacerations. For the purpose of this rule, certain diagnostic and therapeutic procedures requiring medication to immobilize the patient are contained within the definition of surgery.
- (4) Surgery on Infants and Children – Sedation for surgery has higher potential for complications in the pediatric population and needs to be performed in a facility that can support pediatric patients who encounter serious problems.
- (a) Infants and Children Under Two (2) Years of Age – Only short and simple procedures may be performed in a physician’s office. The physician’s judgment is required to determine the need for sedation and a different venue for surgery, even for a simple procedure, in anxious patients and patients with disabilities.
- (b) Children – No Levels II, IIA or III surgeries shall be performed on children under the age of fourteen (14) years in a physician’s office. Level I surgeries contemplated to be performed on children between two (2) and fourteen (14) years of age may be performed in a physician’s office under these rules but only when all of the following conditions are met and then only in compliance with publications such as the American Academy of Pediatrics Guidelines or comparable specialty/subspecialty publications drafted specifically for surgeries performed on pediatric patients, and as they may be updated from time to time in the future:
1. The child has an ASA I risk classification; and
 2. The surgery is anticipated to be brief and simple; and
 3. Only minimal sedation is to be used which shall include only one (1) sedating drug that is administered only one (1) time, in a low dose in addition to a local anesthetic such that at all times the child is awake and interactive. An antagonist to the sedating drug used must be immediately available according to PALS guidelines; and
 4. Sedative or anxiolytic medications shall not be administered at home as part of a pre-procedural sedating plan; and
 5. A PALS equipped emergency cart is available and a person who has a current certification in PALS is mainly assigned with the task of staying in close proximity to the child at all times to observe the child throughout the pre-operative and surgical procedures and until such time as the child is declared fit to be released from the office.

(5) Levels of Surgery Defined

- (a) Level I Office Surgery is the type of surgery in which pre-operative medications are not required or used other than minimal pre-operative tranquilization/anxiolysis of the patient. There is no anesthesia or it is a local, topical, or digital block. No drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient is permitted and the chances of complication requiring hospitalization are remote.
- (b) Level II Office Surgery includes the following:
1. Those in which pre-operative medication and sedation are used intravenously, intramuscularly, inhalation, orally, or rectally, thus making intra and postoperative monitoring necessary; and
 2. Local or peripheral major nerve block, including Bier Block; and
 3. Intravenous, oral, rectal or intramuscular sedation that preserves vital reflexes. However, the use of nitrous oxide in conjunction with other types of sedatives qualifies as Level III surgery.
 4. Any surgery in which the patient is placed in a state that allows the patient to tolerate unpleasant procedures while maintaining adequate cardio respiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than is authorized for Level II surgeries.
- (c) Level II A office procedures are those Level II office surgeries with a maximum planned duration of thirty (30) minutes or less and in which chances of complications requiring hospitalization are remote. This category includes procedures requiring sedation for diagnostic purposes including, but not limited to, endoscopic procedures and radiologic procedures.
- (d) Level III office surgeries are those which involve, or reasonably should require, the use of a general anesthesia, deep sedation, or major conduction anesthesia and pre-operative sedation. This includes the use of:
1. A level of sedation beyond that defined for Level II office surgery; and/or
 2. General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; and/or
 3. Major Conduction Anesthesia (epidural, spinal, caudal); and/or
 4. The use of nitrous oxide in conjunction with other types of sedatives.

(6) Level I Surgeries - Description and Standards

- (a) Level I surgeries include, but are not limited to, the following:
1. Minor procedures performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal oral preoperative tranquilization/anxiolysis of the patient and include, but are not limited to, the following:

- (i) Excision of skin lesions, moles, warts, cysts, lipomas; and
 - (ii) Repair of lacerations or surgery limited to the skin and subcutaneous tissue,
2. Liposuction involving the removal of less than 250 cc supematant fat,
 3. Incision and drainage of superficial abscesses,
 4. Limited endoscopies such as proctoscopies,
 5. Skin biopsies, arthrocentesis, thoracentesis, paracentesis, endometrial biopsy,
 6. IUD's, colposcopy,
 7. Dilation of urethra, cysto-scopic procedures, and
 8. Closed reduction of simple fractures or small joint dislocations (i.e., finger and toe joints).
- (b) Standards for Level I Office Surgery.
1. Training Required – The physician's continuing medical education should include instruction in proper dosages of regional anesthetic drugs and management of toxicity or hypersensitivity to those drugs. It required that either the physician or someone in the operating room at the time of the surgery have a current BCLS certification.
 2. Equipment and Supplies Required - Basic medications and equipment to manage toxic or hypersensitivity reactions.
 3. Assistance of Other Personnel Required - No assistance from other personnel is required unless the specific surgical procedure being performed should reasonably involve an assistant.
- (7) Level II Surgeries - Description and Standards
- (a) Level II Surgeries include, but are not limited to, the following depending upon the level of anesthetic identified:
1. Hemorrhoidectomy,
 2. Hernia repair,
 3. Reduction of closed, uncomplicated fractures,
 4. Large joint dislocations,
 5. Breast biopsies,
 6. Colonoscopy and other endoscopic procedures,
 7. Diagnostic radiologic procedures requiring sedation,

8. Liposuction involving the removal of up to 4000 cc supernatant fat, and
 9. Diagnostic cardiac procedures requiring sedation.
- (b) Transfers – The physician performing the surgery must have staff privileges at a licensed hospital within reasonable proximity or a written transfer protocol to a licensed hospital within reasonable proximity.
- (c) Training Required.
1. The physician must be able to document satisfactory completion of training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or comparable background, training, or experience.
 2. The physician or one (1) assistant must be certified and maintain certification in ACLS or there must be a qualified anesthetic provider practicing within the scope of the provider's license present to manage the anesthetic.
 3. Individuals responsible for patients receiving sedation/analgesia should understand the pharmacology of the agents that are administered, as well as the role of pharmacologic antagonists for opioids and benzodiazepines.
 4. Individuals monitoring patients receiving these agents shall be able to recognize the associated complications.
 5. At least one (1) individual with current ACLS certification who is capable of establishing a patent airway and positive pressure ventilation shall be continuously present whenever sedation/analgesia are administered. There must also be a means immediately available for summoning additional assistance
- (d) Equipment and Supplies (age appropriate) Required:
1. Suction devices, endotracheal tubes, laryngoscopes, etc.
 2. Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.
 3. Double tourniquet for the Bier block procedure.
 4. Monitors for blood pressure, EKG, Oxygen saturation, and temperature.
 5. Emergency intubation equipment.
 6. Adequate operating room lighting.
 7. Appropriate sterilization equipment.
 8. IV solution and IV equipment.
 9. Reversal or antagonist agents for medications used.
 10. A standard and emergency ACLS equipped cart and other such equipment as is necessary for the procedure being performed.

- (e) Assistance of Other Personnel Required.
 - 1. The physician must be assisted by a professional licensed pursuant to Tennessee Code Annotated Title 63, Chapters 6, 7, 9, or 19 and practicing within the lawful scope of their licensure, and who is functioning as an assisting anesthesia provider who cannot function in any other capacity during the procedure.
 - 2. Following the procedure, there must be a monitor present at all times with the patient while in the recovery area. A professional licensed pursuant to either Tennessee Code Annotated, Title 63 Chapter 6, 9 or 19 or a registered or advanced practice nurse licensed pursuant to Tennessee Code Annotated, Title 63 Chapter 7 must be immediately available on the premises to monitor the patient in the recovery room until the patient has recovered from anesthesia. Any such professional must have post-anesthesia care unit experience or its equivalent and credentials in ACLS. In addition, the monitor must be currently certified in ACLS.
- (f) Level II surgeries are limited to patients who fall within ASA Class 1, 2, and 3 risk classification criteria.
- (8) Level II A Office Surgery – Description and Standards
 - (a) All the standards set forth for Level II Surgeries must be met except subparagraph (7) (e), Assistance of Other Personnel Required.
 - (b) During the procedure, a certified nurse practitioner, physician assistant, registered nurse, advanced practice nurse or licensed practical nurse must assist the physician. Additional assistance may be required by specific procedure or patient circumstances and if so, it must be provided by a person licensed pursuant to either Tennessee Code Annotated, Title 63, Chapters 6, 7, 9 or 19, or a nationally certified operating room technician.
- (9) Level III Office Surgery – Description and Standards
 - (a) The Board adopts as its own the standards established, and as they may be from time to time amended, by either the AAAASF, the AAAHC or the JCAHO except to the extent that any provision of these rules provide a stricter standard in which case these rules shall govern.
 - (b) Any practice location at which Level III surgeries are to be performed must have a current accreditation from the AAAASF, the AAAHC or the JCAHO.
 - 1. Practices covered by these rules in existence on the effective date of these rules will have one (1) year from the effective date of these rules to obtain or be scheduled to obtain such accreditation.
 - 2. The accrediting organization shall notify the Board of practice locations that have applied for accreditation and have subsequently been denied accreditation.
 - 6. Only patients classified under the ASA risk classification criteria as Class 1 or 2 are appropriate candidates for Level III office surgery.
 - 7. Hospital Staff Privileges required - The physician performing the surgery must have staff privileges to perform the same procedure as that being performed in the office setting at a licensed hospital within reasonable proximity.

8. Training Required – The physician must have documentation of training to perform the particular surgical procedures and must have knowledge of the principles of general anesthesia. The physician and at least one (1) assistant must be currently certified in ACLS.
9. Assistance of Other Personnel Required.
 - (i) An anesthesiologist or certified registered nurse anesthetist licensed pursuant to Tennessee Code Annotated, Title 63, Chapter 7 and practicing within the lawful scope of that license, must administer the general or regional anesthesia. The anesthesia provider cannot function in any other capacity during the procedure and shall be physically present with the patient at all times during the intra-operative period.
 - (ii) When general anesthesia using volatile anesthetic gases, succinylcholine or other agents known to trigger malignant hyperthermia are administered, the facility shall maintain or have immediate access to thirty-six (36) ampules of dantrolene and its diluent for injection. If dantrolene is administered, appropriate monitoring must be provided postoperatively.
 - (iii) Following the procedure, there must be a monitor present at all times with the patient while in the recovery area. A professional licensed pursuant to either Tennessee Code Annotated, Title 63, Chapters 6, 9 or 19 or a registered or advanced practice nurse licensed pursuant to Tennessee Code Annotated, Title 63, Chapter 7 must be immediately available on the premises to monitor the patient in the recovery room until the patient has recovered from anesthesia. Any such professional must have post-anesthesia care unit experience or its equivalent and credentials in ACLS. In addition, the monitor must be currently certified in ACLS.
- (10) Requirements Applicable to Level II, II A, Surgeries Performed in Office Locations not Certified by the AAAASF, the AAAHC or the JCAHO.
 - (a) Pre, Intra, Postoperative Services In General.
 1. An operative/procedure note shall be created for each surgery describing the procedure performed, the techniques used, participating personnel and their titles, postoperative diagnosis, type of anesthesia, and complications. Where similar procedures are performed at an office routinely, partially pre-printed forms may be utilized as a guide, provided that original data and conclusions applicable to the specific patient are contemporaneously entered to create a complete report.
 2. A post-procedure note shall be created for each surgery and completed prior to discharge of a patient from the office, which shall include such post-procedure data as the patient's general condition, vital signs, treatments ordered, and all drugs, prescribed, administered or dispensed including dosages and quantities.
 3. All patients, except those who receive minor regional blocks and/or local anesthetic only, shall receive appropriate postoperative management. A patient may be excused from a stay in the recovery area only by a specific order of the anesthesia personnel or the operating physician.
 4. The patient shall be transported to the recovery area accompanied by a member of the anesthesia care team who is knowledgeable about the patient's condition. The patient shall be continually evaluated and treated during transport appropriate to the patient's condition.

5. An oral report on the patient's condition shall be given to the health care personnel responsible for the patient in the recovery area who were not present in the anesthetizing location.
 6. The patient's recovery area condition shall be evaluated and recorded in the medical record. The blood pressure, pulse rate, respiratory rate, blood oxygen saturation, level of consciousness, and when appropriate temperature shall be assessed at least every fifteen (15) minutes (five [5] minutes for pediatric patients) until they are stable and returned to pre-operative baseline values and/or normal values consistent with the patient's age and medical condition.
 7. Objective criteria (for example a scoring system such as PARR or Aldrete Score) shall be established to determine when a patient is medically ready or "fit" to be discharged.
 8. Before discharge, the patient shall be given written and verbal instructions for follow-up care and advice concerning complications. Emergency phone number shall be provided to the patient.
 9. If sedation or regional blocks have been used, a responsible adult must be available to accompany the patient and be instructed with regard to the patient care and follow-up.
- (b) Sufficient space shall be available to accommodate all necessary equipment and personnel and to allow for expeditious access to the patient and all resuscitation and monitoring equipment.
- (c) **Pharmaceutical Services** - The office shall maintain and provide drugs and biologicals in a safe and effective manner in accordance with accepted standards of practice. Such drugs and biologicals must be stored in a separate room or cabinet which shall be kept locked at all times and a log of all such drugs and biologicals dispensed shall be maintained.
- (d) **Ancillary Services** - All ancillary or supportive health medical services, including but not limited to, radiological, pharmaceutical, or medical laboratory services shall be provided in accordance with all applicable state and federal laws and regulations.
- (11) **Miscellaneous**
- (a) **Liposuction** - Liposuction procedures performed pursuant to these rules shall be performed only by physicians with appropriate training following prescribed national professional guidelines. These procedures shall be within the scope of practices of the physician and capabilities of the office. Provided however, no such procedures may be performed if the anticipated supernatant fat removal is to be greater than 4000 cc. In addition the following shall also apply:
1. When combined with other surgical procedures, liposuction may not exceed 2000 cc of supernatant fat.
 2. A maximum of 50mg/kg of Lidocaine can be injected for tumescent liposuction in the office setting.
- (b) **Laser surgery** - Laser surgeries performed pursuant to these rules require written policies and procedures that include, but are not limited to, laser safety, education, training, and the supervision of other licensed health care practitioners who are performing laser treatments. A safe environment shall be maintained for laser surgery.

(c) Time Limits and Additional Requirements –

1. For all Level III surgery procedures performed pursuant to these rules, the maximum planned duration of all surgical procedures combined must not exceed six (6) hours.
 2. If the patient has not recovered sufficiently to be safely discharged within twelve (12) hours after the initial administration of anesthesia, the patient must be transferred to a hospital for continued postoperative care.
- (12) Any violation of these rules shall be grounds for disciplinary actions before the board pursuant to T.C.A. § 63-6-214 (b) (1), (2) or (4).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-6-204 and 63-6-214.

The notice of rulemaking set out herein was properly filed in the Department of State on the 5th day of April, 2004. (04-03)

TENNESSEE MOTOR VEHICLE COMMISSION - 0960

There will be a hearing before the Tennessee Motor Vehicle Commission to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann. § 55-17-107. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:30 a.m. (Central Time) on Monday, July 12, 2004.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this Notice of Rulemaking Hearing, contact the Tennessee Motor Vehicle Commission, attention Barry Woody, Tennessee Motor Vehicle Commission, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243 at (615) 741-2711.

SUBSTANCE OF PROPOSED RULE**CHAPTER 0960-1
CIVIL PENALTIES****AMENDMENT**

Paragraph (1) of rule 0960-1-.13 Civil Penalties is amended by deleting the text of the paragraph and substituting instead the following so that, as amended, the paragraph shall read:

- (1) The Commission may, in a lawful proceeding respecting licensing (as defined in the Uniform Administrative Procedures Act), in addition to or in lieu of any other lawful disciplinary action, assess civil penalties for violations of statutes, rules, or orders enforceable by the Commission in accordance with the following schedule:

Violation	Penalty
T.C.A. §55-17-109 (a)	\$50 - 1000
T.C.A. §55-17-109 (b)	\$50 - 1000
T.C.A. §55-17-110 (a)	\$50 - 1000
(b)	\$50 - 1000
(c)	\$50 - 1000
(d)	\$50 - 1000
(e)	\$50 - 1000
T.C.A. §55-17-111 (a)(8)(g)	\$50 - 1000
(h)	\$50 - 1000
T.C.A. §55-17-113 (b)	\$50 - 1000
(c)	\$50 - 1000
T.C.A. §55-17-114 (a)(1)	\$50 - 1000
(a)(2)	\$50 - 1000
(a)(3)	\$50 - 1000
(a)(4)	\$50 - 1000
(a)(5)	\$50 - 1000
(a)(6)	\$50 - 1000
(b)(1)	\$50 - 1000
(b)(2)	\$50 - 1000
(b)(3)	\$50 - 1000
(b)(4)	\$50 - 1000
(b)(5)	\$50 - 1000
(b)(6)	\$50 - 1000
(b)(7)	\$50 - 1000
(b)(8)	\$50 - 1000
(b)(9)	\$50 - 1000
(b)(10)	\$50 - 1000
(b)(11)	\$50 - 1000
(b)(12)	\$50 - 1000
(c)(1)	\$50 - 1000
(c)(2)	\$50 - 1000
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(c)(4)	\$50 - 1000

	(c)(5)	\$50 - 1000
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	(d)(2)	\$50 - 1000
	(d)(3)	\$50 - 1000
	(d)(4)	\$50 - 1000
T.C.A. §55-17-117	(a)	\$50 - 1000
T.C.A. §55-17-121	(a)	\$50 - 1000
	(b)	\$50 - 1000
	(c)	\$50 - 1000
T.C.A. §55-17-125	(a)	\$50 - 1000
T.C.A. §55-17-125	(b)	\$50 - 1000

Authority: T.C.A. §§ 55-17-107(1) and 56-1-308.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of April, 2004. (04-26)

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WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 04-12

TEMPORARY SUSPENSION OF NO-WAKE ZONE ON TIMS FORD LAKE

Pursuant to TCA 69-209-(2)(A), The Tennessee Wildlife Resources Commission in conjunction with the Executive Director of the Wildlife Resources Agency, hereby proclaims the temporary suspension of Rule 1660-2-7-.10 (7) Tims Ford Lake. The temporary suspension is granted in association with a TWRA marine permit issued to the Tennessee Drag Boat Association for a race to be held in the Boiling Fork Creek area near the Highway 130 Bridge. The no-wake rule suspension is granted only to the participants and officials of the Tennessee Drag Boat Association on May 21-May 23, 2004 from the hours of 6:00 AM on May 21st through May 23rd at 7:00 PM. Measures are being taken to assure the public health, safety and welfare, and the aquatic habitat are reasonably protected and that adequate public notice is given.

Proclamation No. 04-12 received and recoded this 26th day of April, 2004. (04-16)

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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 April 1, 2004 and ending April 30, 2004.

A handwritten signature in black ink that reads 'Riley C. Darnell'.

RILEY C. DARNELL
Secretary of State

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