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Secretary of State

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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

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 8.50%.

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 October 2004 is 8.76 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 4.76 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 previous month. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-01	Aug 2, 2004	0870 Massage Licensure Board	Rulemaking Hearing Rules	Amendment	<i>Chapter 0870-1 General Rules Governing Licensed Massage Therapists and Establishments</i> Rule 0870-1-.13 Disciplinary Grounds, Actions, and Civil Penalties	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 16, 2004
08-02	Aug 2, 2004	0260 Chiropractic Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0260-2 General Rules Governing Chiropractic Examiners</i> 0260-2-.15 Disciplinary Actions, Civil Penalties, Screening Panels, Subpoenas, and Assessment of Costs <i>Chapter 0260-3 General Rules and Regulations Governing the Practice of Chiropractic X-Ray Technologists</i> 0260-3-.14 Disciplinary Actions and Civil Penalties <i>Chapter 0260-5 General Rules Governing Chiropractic Therapy Assistants</i> 0260-5-.14 Disciplinary Actions and Civil Penalties	Robert J. Kraemer, Jr., OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 16, 2004
08-03	Aug 9, 2004	1330 Respiratory Care	Rulemaking Hearing Rules	Amendment	<i>Chapter 1330-1 General Rules Governing Respiratory Care Practitioners</i> 1330-1-.15 Disciplinary Grounds, Actions, and Civil Penalties	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 23, 2004
08-04	Aug 9, 2004	1365 Social Worker Certification and Licensure	Rulemaking Hearing Rules	Amendment	<i>Chapter 1365-1 General Rules and Regulations</i> 1365-1-.15 Disciplinary Actions, Civil Penalties, and Declaratory Orders	Ernest Sykes, Jr. OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 23, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-06	Aug 9, 2004	1150 Occupational and Physical Therapy Examiners	Rulemaking Hearing Rules	Amendment	<i>Chapter 1150-2 General Rules Governing the Practice of Occupational Therapy</i> 1150-2-.15 Disciplinary Actions, Civil Penalties, and Screening Panels	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 23, 2004
08-07	Aug 9, 2004	1180 Psychology	Rulemaking Hearing Rules	Amendment	<i>Chapter 1180-1 General Rules Governing the Practice of Psychologists, Senior Psychological Examiners, Psychological Examiners, and Certified Psychological Assistants</i> 1180-1-.10 Disciplinary Grounds, Actions, Civil Penalties, Settlements, and Screening Panels	Nicole Armstrong, OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 23, 2004
08-08	Aug 9, 2004	0780 Commerce and Insurance Division of Insurance	Rulemaking Hearing Rules	Repeal	<i>Chapter 0780-1-22 Relating to Certificates of Insurance Used in connection with Casualty Insurance Policies</i>	Susan G. Wittig Commerce & Insurance 5th Fl Davy Crockett Twr 500 J Robertson Pkwy Nashville TN 37243 615-741-2199 Phone	Oct 23, 2004
08-19	Aug 11, 2004	0240 Board of Regents State University and Community College System of TN Systemwide Administrative Rules	Proposed Rules	Amendments	<i>Chapter 0240-1-1 Use of Campus Property and Facilities</i> 0240-1-1-.04 Particular Uses	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-20	Aug 11, 2004	0240 Board of Regents State University and Community College System of TN Systemwide Administrative Rules	Proposed Rules	Amendments	<i>Chapter 0240-2-2 Classifying Students In-State and Out-of-State</i> 0240-2-2-.02 Definitions 0240-2-2-.03 Rules for Determination of Status 0240-2-2-.04 Out-of-State Students Who are not Required to Pay Out-of-State Tuition 0240-2-2-.05 Presumption	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-21	Aug 11, 2004	0240 Board of Regents State University and Community College System of TN Systemwide Administrative Rules	Proposed Rules	Amendments	<i>Chapter 0240-2-3</i> <i>Student Conduct and Disciplinary Sanctions</i> 0240-2-3-.02 Disciplinary Offenses 0240-2-3-.03 Academic and Classroom Misconduct 0240-2-3-.04 Disciplinary Sanctions	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-22	Aug 11, 2004	0240 Board of Regents State University and Community College System of TN Systemwide Administrative Rules	Proposed Rules	Amendments	<i>Chapter 0240-2-4</i> <i>Student Organizations</i> 0240-2-4-.11 Programs and Activities	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-23	Aug 11, 2004	0240 Board of Regents State University and Community College System of TN Systemwide Administrative Rules	Proposed Rules	Amendments	<i>Chapter 0240-2-6</i> <i>Student Residence Regulations and Agreements</i> 0240-2-6-.02 General Provisions Applicable to All Student Residence Agreements and Leases 0240-2-6-.03 Provisions Applicable To Student Dormitories and Residence Halls 0240-2-6-.04 Provisions Applicable to Student Apartments	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-24	Aug 11, 2004	0240 Board of Regents State University and Community College System of TN Systemwide Administrative Rules	Proposed Rules	Amendments	<i>Chapter 0240-2-7</i> <i>Residence Hall Visitation Policy</i> 0240-2-7-.03 Visitation Policies and Procedures	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-25	Aug 11, 2004	0240 Board of Regents State University and Community College System of TN Systemwide Administrative Rules	Proposed Rules	Amendments	<i>Chapter 0240-2-8</i> <i>Certification of Draft Registration</i> 0240-2-8-.03 Enrollment Certification	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-26	Aug 11, 2004	0240 Board of Regents Austin Peay State University	Proposed Rules	Amendments	<i>Chapter 0240-3-1</i> <i>Student Disciplinary Rules</i> 0240-3-1-.05 Disciplinary Procedures 0240-3-1-.07 Traffic and Parking Regulations	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-27	Aug 11, 2004	0240 Board of Regents East TN State University	Proposed Rules	Amendments	<i>Chapter 0240-3-2</i> <i>Student Disciplinary Rules</i> 0240-3-2-.03 Academic and Classroom Misconduct 0240-3-2-.05 Disciplinary Procedures	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-28	Aug 11, 2004	0240 Board of Regents The University of Memphis	Proposed Rules	Amendments	<i>Chapter 0240-3-3</i> <i>Student Disciplinary Rules</i> 0240-3-3-.03 Judicial Authority 0240-3-3-.04 Proscribed Conduct 0240-3-3-.06 Judicial Procedures 0240-3-3-.09 Traffic and Parking Regulations 0240-3-3-.10 Motor Vehicle Registration	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-29	Aug 11, 2004	0240 Board of Regents TN State University	Proposed Rules	Amendments	<i>Chapter 0240-3-5</i> <i>Student Disciplinary Rules</i> 0240-3-5-.03 Academic and Classroom Misconduct 0240-3-5-.07 Registration of Automobiles	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-30	Aug 11, 2004	0240 Board of Regents TN Technological University	Proposed Rules	Amendments	<i>Chapter 0240-3-6</i> <i>Student Disciplinary Rules</i> 0240-3-6-.02 Disciplinary Offenses 0240-3-6-.03 Academic and Classroom Misconduct 0240-3-6-.04 Disciplinary Sanctions 0240-3-6-.05 Disciplinary Procedures	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-31	Aug 11, 2004	0240 Board of Regents Cleveland State Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-8</i> <i>Student Disciplinary Rules</i> 0240-3-8-.06 Traffic and Parking Regulations 0240-3-8-.07 Registration of Motor Vehicles	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-32	Aug 11, 2004	0240 Board of Regents Columbia State Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-9</i> <i>Student Disciplinary Rules</i> 0240-3-9-.02 Disciplinary Offenses 0240-3-9-.03 Academic and Classroom Misconduct 0240-3-9-.05 Disciplinary Procedures 0240-3-9-.06 Miscellaneous 0240-3-9-.07 Traffic and Parking Regulations	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-33	Aug 11, 2004	0240 Board of Regents Jackson SCC	Proposed Rules	Amendments	<i>Chapter 0240-3-11</i> <i>Student Disciplinary Rules</i> 0240-3-11-.04 Disciplinary Sanctions 0240-3-11-.05 Disciplinary Procedures 0240-3-11-.06 Traffic and Parking Regulations	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-34	Aug 11, 2004	0240 Board of Regents Roane State Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-13</i> <i>Student Disciplinary Rules</i> 0240-3-13-.02 Disciplinary Offenses 0240-3-13-.06 Traffic and Parking Regulations 0240-3-13-.07 Registration of Motor Vehicles	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-35	Aug 11, 2004	0240 Board of Regents Volunteer State CC	Proposed Rules	Amendments	<i>Chapter 0240-3-15</i> <i>Student Disciplinary Rules</i> 0240-3-15-.02 Disciplinary Offenses 0240-3-15-.03 Academic and Classroom Misconduct 0240-3-14-.04 Disciplinary Sanctions 0240-3-15-.06 Traffic and Parking Regulations	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-36	Aug 11, 2004	0240 Board of Regents Walters State Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-16</i> <i>Student Disciplinary Rules</i> 0240-3-16-.02 General Offenses 0240-3-16-.06 Traffic and Parking Regulations 0240-3-16-.07 Motor Vehicle Registration	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-37	Aug 11, 2004	0240 Board of Regents Nashville State Technical Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-17</i> <i>Student Disciplinary Rules</i> 0240-3-17-.02 Disciplinary Offenses 0240-3-17-.06 Traffic and Parking Regulations 0240-3-17-.07 Motor Vehicle Registration	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-38	Aug 11, 2004	0240 Board of Regents Pellissippi State Technical Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-18 Student Disciplinary Rules</i> 0240-3-18-.01 Institutional Policy Statement 0240-3-18-.02 Disciplinary Offenses 0240-3-18-.03 Academic and Classroom Misconduct 0240-3-18-.04 Disciplinary Sanctions 0240-3-18-.05 Disciplinary Procedures 0240-3-18-.06 Traffic and Parking Regulations 0240-3-18-.08 Registration of Vehicles	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-39	Aug 11, 2004	0240 Board of Regents Cleveland State Community College	Proposed Rules	Amendments	<i>Chapter 0240-3-8 Student Disciplinary Rules</i> 0240-3-8-.06 Traffic and Parking Regulations 0240-3-8-.07 Registration of Motor Vehicles	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-40	Aug 11, 2004	0240 Board of Regents Austin Peay State University	Proposed Rules	Amendments	<i>Chapter 0240-4-1 Student Housing Rules</i> 0240-4-1-.02 Residence Hall Conduct and Disciplinary Sanctions	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-41	Aug 11, 2004	0240 Board of Regents The University of Memphis	Proposed Rules	Amendments	<i>Chapter 0240-4-3 Student Housing Rules</i> 0240-4-3-.06 Reservations (Deposit, Cancellation and Refund Policies) 0240-4-3-.08 Special Regulations Applicable to Student Family Housing	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-42	Aug 11, 2004	0240 Board of Regents Middle TN State University	Proposed Rules	Amendments	<i>Chapter 0240-4-4 Student Housing Rules</i> 0240-4-4-.03 Residence Hall Conduct and Disciplinary Sanctions 0240-4-4-.08 Special Regulations Applicable to Particular Housing Facilities	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004
08-43	Aug 11, 2004	0240 Board of Regents TN Technological University	Proposed Rules	Amendments	<i>Chapter 0240-4-6 Student Housing Rules</i> 0240-4-6-.01 Eligibility 0240-4-6-.04 Visitation 0240-4-6-.06 Reservations (Deposit, Cancellation, and Refund Policies) 0240-4-6-.07 Miscellaneous	Nancy Washington 1415 Murfreesboro Rd Suite 350 Nashville TN 37217 615-366-4438	Dec 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-55	Aug 13, 2004	1045 Optometry	Rulemaking Hearing Rules	Amendments	<i>Chapter 1045-2 General Rules Governing the Practice of Optometry</i> 1045-2-.10 Disciplinary Actions, Civil Penalties, Declaratory Orders, Assessment of Costs, and Subpoenas	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 27, 2004
08-57	Aug 17, 2004	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 0780-1-77 Interpretive Opinions</i> 0780-1-77-.01 Interpretive Opinions	Eric J. Stansell Commerce and Insurance Davy Crockett Twr 5th Fl 500 J Robertson Pkwy Nashville TN 37243 615-741-2199	Oct 31, 2004
08-58	Aug 18, 2004	0400 Environment and Conservation Superfund	Emergency Rules	New Rules	<i>Chapter 1200-1-19 Standards for Testing and Cleaning Clandestine Drug Manufacturing Sites</i> 1200-1-19-.01 Standards For Determining Living Space Safe For Human Use 1200-1-19-.02 Use Of Qualified Professionals For Sampling And Cleanup	Jim Haynes, Director Division of Superfund 401 Church St 4 th FL L & C Annex Nashville TN 37243-1538 615-532-0227	August 18, 2004 through Jan 30, 2004
08-60	Aug 23, 2004	1200 Health Board of Alcohol and Drug Abuse Counselors Health Related Boards	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-30-1 Rules Governing Licensure of Alcohol and Drug Abuse Counselors</i> 1200-1-.15 Disciplinary Actions and Civil Penalties	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37243 (615) 741-1611	Nov 6, 2004
08-61	Aug 23, 2004	0480 Dispensing Opticians	Rulemaking Hearing Rules	Amendment	<i>Chapter 0480-1 General Rules Governing Dispensing Opticians</i> 0480-1-.15 Disciplinary Actions and Civil Penalties	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37243 (615) 741-1611	Nov 6, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-67	Aug 25, 2004	0450 Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0450-1</i> <i>General Rules Governing Professional Counselors</i> 0450-1-.15 Disciplinary Actions and Civil Penalties</p> <p><i>Chapter 0450-2</i> <i>General Rules Governing Marital and Family Therapists</i> 0450-2-.15 Disciplinary Actions and Civil Penalties</p> <p><i>Chapter 0450-3</i> <i>General Rules Governing Clinical Pastoral Therapists</i> 0450-3-.15 Disciplinary Actions and Civil Penalties</p>	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 8, 2004
08-69	Aug 27, 2004	1050 Osteopathic Examination	Rulemaking Hearing Rules	Amendment	<p><i>Chapter 1050-2</i> <i>General Rules and Regulations Governing the Practice of Osteopathy</i> 1050-2-.10 Licensure Discipline and Civil Penalties</p>	Robert J. Kraemer, Jr Health OGC 26 th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Nov 10, 2004
08-70	Aug 27, 2004	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendment	<p><i>Chapter 1200-8-1</i> <i>Standards for Hospitals</i> 1200-8-1-.01 Definitions</p>	Ernest Sykes, Jr. Health OGC 26 th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Nov 10, 2004
08-72	Aug 27, 2004	0460 Dentistry	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0460-1</i> <i>General Rules</i> 0460-1-.06 Disciplinary Actions, Civil Penalties, Procedures, Declaratory Orders, Assessment of Costs, and Subpoenas</p>	Ernest Sykes, Jr. Health OGC 26 th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	Nov 10, 2004
08-73	Aug 30, 2004	0520 Education	Proposed Rule	Amendments	<p><i>Chapter 0520-1-3</i> <i>Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.06 Graduation, Requirement E</p>	Debra E. Owens 9th Fl Johnson Twr 710 J Robertson Pkwy Nashville TN,	Dec 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-74	Aug 30, 2004	0520 Education	Proposed Rule	Amendments	<i>Chapter 0520-1-9 Special Education Programs and Services</i> 0520-1-9-.03 Administration of Special Education and Early Intervention Services	Debra E. Owens 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN, 37243-1050 (615) 532-3528	Dec 29, 2004
08-75	Aug 30, 2004	0520 Education	Proposed Rule	Amendments	<i>Chapter 0520-1-9 Special Education Programs and Services</i> 0520-1-9-.05 Referral, Initial Evaluation, and Reevaluation	Debra E. Owens 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN, 37243-1050 (615) 532-3528	Dec 29, 2004
08-76	Aug 30, 2004	0520 Education	Proposed Rule	Amendments	<i>Chapter 0520-1-9 Special Education Programs and Services</i> 0520-1-9-.08 Provision of Free Appropriate Public Education (FAPE) 0520-1-9-.09 Composition of the IEP Team 0520-1-9-.10 Development of the IEP 0520-1-9-.12 Least Restrictive Environment (LRE) and Placemen	Debra E. Owens 9th Fl A Johnson Twr 710 J Robertson Pkwy Nashville TN, 37243-1050 (615) 532-3528	Dec 29, 2004
08-79	Aug 31, 2004	1540 Higher Education Commission	Public Necessity Rules	Amendments	<i>Chapter 1540-1-4 Public Higher Education Fee Waivers for State Employees</i> 1540-1-4-.01 Definitions 1540-1-4-.02 Eligibility 1540-1-4-.03 Limitations 1540-1-4-.04 Appeal Procedures	Will Burns 1900 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243-0830 (615) 741-7571	Aug 31, 2004 through Feb 12, 2004
08-80	Aug 31, 2004	1540 Higher Education Commission	Proposed Rules	Amendments	<i>Chapter 1540-1-4 Public Higher Education Fee Waivers for State Employees</i> 1540-1-4-.01 Definitions 1540-1-4-.02 Eligibility 1540-1-4-.03 Limitations 1540-1-4-.04 Appeal Procedures	Will Burns 1900 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243-0830 (615) 741-7571	Dec 29, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	DESCRIP-TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-81	Aug 31, 2004	1540 Higher Education Commission	Public Necessity Rules	Amendments	<i>Chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees</i> 1540-1-5-.01 Definitions 1540-1-5-.02 Eligibility 1540-1-5-.03 Limitations 1540-1-5-.04 Appeal Procedures	Will Burns 1900 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243-0830 (615) 741-7571	Aug 31, 2004 through Feb 12, 2004
08-82	Aug 31, 2004	1540 Higher Education Commission	Proposed Rules	Amendments	<i>Chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees</i> 1540-1-5-.01 Definitions 1540-1-5-.02 Eligibility 1540-1-5-.03 Limitations 1540-1-5-.04 Appeal Procedures	Will Burns 1900 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243-0830 (615) 741-7571	Dec 29, 2004
08-83	Aug 31, 2004	0780 Commerce and Insurance Division of Insurance	Rulemaking Hearing Rules	Repeals	<i>Chapter 0780-1-45 Relating to Medicare Supplement Insurance</i>	Susan G. Wittig Commerce & Insurance 5th Fl Crockett Twr 500 J Robertson Pkwy Nashville TN 37243 615-741-2199	Nov 14, 2004
08-84	Aug 31, 2004	0780 Commerce and Insurance Division of Insurance	Rulemaking Hearing Rules	Repeals	<i>Chapter 0780-1-26 Agents Writing Travel Accident or Travel Personal Property Insurance Required to Pass Written Examination</i>	Susan G. Wittig Commerce & Insurance 5th Fl Crockett Twr 500 J Robertson Pkwy Nashville TN 37243 615-741-2199	Nov 14, 2004

ANNOUNCEMENTS

TN HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Applications will be heard at the October 27, 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 August 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 consideration.

For more information concerning each application you may contact the Health Services and Development Agency at 615/741-2364.

NAME AND ADDRESS AND DESCRIPTION

* The Endoscopy Center North
623 East Emory Road
Knoxville (Knox County), TN 37938CN0407-070
Contact Person: John Wellborn, Consultant
Phone No. 615-665-2022

Consent Calendar will be heard at the September 22, 2004 Agency Meeting

The establishment of an ambulatory surgical treatment center (ASTC) limited to gastroenterology at 623 East Emory Road, Knoxville (Knox County), TN 37938. This project replaces and changes ownership of a similar, unimplemented facility approved in the same area, under CN0208-069. The proposed facility will be developed in 4,213 SF of space leased in the existing PlastiLine building. It will contain two (2) procedure rooms and eight (8) pre-and post-op recovery spaces, and other support areas; and it will share use of 1,164 SF of support space in the adjoining practice office of Gastrointestinal Associates. The project will be licensed as an ambulatory surgical treatment center (ASTC) limited to gastroenterology by the Tennessee Department of Health. The project will not contain major medical equipment or initiate or discontinue any other health service; and it will not affect any licensed bed complements.

\$ 2,234,326.00

Erlanger East
 1755 Gunbarrel Road
 Chattanooga (Hamilton County), TN 37421
 CN0405-047
 Contact Person: Martin S. McKay, Planner
 Phone No. 423-778-3286

The construction of a new four (4) story patient tower and other ancillary space totaling approximately 178,500 square feet; renovation of approximately 22,500 square feet of space, transfer of seventy-nine (79) beds from the Erlanger Medical Center main campus to the Erlanger East campus; initiation of cardiac catheterization and the acquisition of MRI scanner. The urgent care center will be upgraded to a full-service emergency department. The additional seventy-nine (79) beds will increase the licensed bed capacity from twenty-eight (28) beds to one hundred seven (107) beds. The main campus licensed bed capacity will decrease from 703 to 624 licensed beds.
 \$ 68,725,321.00

St. Jude Children's Research Hospital
 332 North Lauderdale Street
 Memphis (Shelby County), TN 38105
 CN0405-049
 Contact Person: William H. West, Esq.
 Phone No. 615-726-5600

The construction of a seven (7)-story (including basement) building to be called the Integrated Patient Care and Research Building, Tower One; the acquisition of the following major medical equipment; a linear accelerator; a cyclotron, two 2.0 Tesla magnetic resonance imaging ("MRI") scanners, and a PET/CT scanner; and the addition of sixteen (16) licensed hospital beds. The project will be located on the campus of St. Jude Children's Research Hospital, 332 North Lauderdale Street, Memphis, TN 38105.
 \$ 106,714,834.00

Blount Memorial Hospital
 907 E. Lamar Alexander Parkway
 Maryville (Blount County), TN 37804
 CN0406-050
 Contact Person: Jane Hennessy Nelson, Assistant Administrator
 Phone No. 865-981-2310

The initiation of open heart surgical services. Initialization of this project will entail the renovation and modification of existing facilities (2020 square feet) situated on Level 2 of the hospital in the existing Operating Suite and adjoining area. The present number of ICU/CCU/step-down and medical/surgical beds are adequate to support the proposed volume of open heart procedures. The proposed Open Heart program will be operated by Blount Memorial Hospital under the existing organizational structure.
 \$ 1,560,057.25

NHC HealthCare, Smithville
825 Fisher Avenue
Smithville (DeKalb County), TN
CN0407-060
Contact Person: Bruce K. Duncan, Assistant Vice President
Phone No. 615-890-2020

The addition of six (6) new Medicare certified nursing home beds to the existing one hundred fourteen (114) bed NHC HealthCare, Smithville (currently certified for both Medicaid and Medicare participation) for a total of one hundred twenty (120) nursing home beds located at 825 Fisher Avenue in Smithville, DeKalb County. The project involves the conversion of six (6) licensed assisted living units to six (6) nursing home beds.
\$ 101,000.00

Wellmont Bristol Regional Medical Center
1 Medical Park Blvd
Bristol (Sullivan County), TN 37620
CN0407-062
Contact Person: Troy Clark, Director, Strategic Planning
Phone No. 423-230-8209

The acquisition of a magnetic resonance imaging (MRI) system at the hospital campus located at 1 Medical Park Blvd., Bristol, TN 37620. Major medical equipment includes a General Electric Signa 3.0 Tesla Whole Body MRI System. If approved, Wellmont Bristol Regional Medical Center will be operating two fixed MRI scanners. No beds are involved.
\$ 3,382,919.00

Jackson-Madison County General Hospital
708 West Forest Avenue
Jackson (Madison County), TN 38301
CN0407-063
Contact Person: Victoria S. Lake, Director, Market Research and Community Development
Phone No. 731-660-8735

Expansion of the Emergency Department to include 20,475 square feet of new space; 2,000 square feet of renovated space; and 8,000 square feet of new shell space. The new space will include twenty-two (22) new patient exam rooms: six (6) will be built to trauma specifications and two (2) will be for orthopedics. Jackson-Madison County General Hospital is located at 708 West Forest Avenue in Jackson. There will be no change in the licensed bed count of the hospital. This project does not include the acquisition of major medical equipment.
\$ 10,857,930.00

East Tennessee PET Center, Inc.
1450 Dowell Springs Boulevard, Suite 210
Knoxville (Knox County), TN 37909
CN0407-066
Contact Person: John B. Sylvia, Director of Planning
Phone No. 865-632-5166

The establishment of an outpatient diagnostic center (ODC) and the initiation of positron emission tomography (PET) services. The equipment will be a combination PET/CT unit. Upon approval of this application, the mobile PET service at Baptist Hospital of East Tennessee, Inc., will not only be discontinued but Certificate of Need CN0210-102A will be surrendered. The new service will be provided in Suite 210 of The Cornerstone Building located at 1450 Dowell Springs Boulevard, Knoxville, Tennessee, 37909. This project will not increase or decrease any licensed bed complement. No other major medical equipment will be involved and no other health services are being proposed.
\$ 3,395,623.00

Cardiovascular Associates at Meadowview Lane Professional Center
2033 MeadowView Lane
Kingsport (Sullivan County), TN 37660
CN0407-068
Contact Person: John Wellborn, Consultant
Phone No. 615-665-2022

Establishment of an outpatient diagnostic center (ODC) and the initiation of MRI services, one day per week, at 2033 MeadowView Lane, Kingsport, TN 37660 at a capital cost for CON purpose of \$575,634, of which \$30,000 is the capital expenditure and the balance is the value of leased space and equipment. The ODC with MRI will be established by leasing the MRI from Holston Medical Group for one (1) day per week in a 3,538 SF area (with MRI) of an approved ODC being constructed at that address by Holston Medical Group (CN0209-089A). The proposed facility will be licensed as an Outpatient Diagnostic Center by the Tennessee Department of Health. The project does not contain any other type of major medical equipment or initiate or discontinue any other health service; and it will not affect any licensed bed complements.
\$ 575,634.00

Center for Inflammatory Disease
2001 Charlotte Avenue
Nashville (Davidson County), TN 37203
CN0407-069
Contact Person: John Wellborn, Consultant
Phone No. 615-665-2022

To acquire an magnetic resonance imaging (MRI) unit and to initiate MRI imaging of the hand and foot for its patients only, at its practice office at 2001 Charlotte Avenue, Nashville, TN 37203, through acquisition of a portable 0.2 Tesla MRI unit. This new type of MRI images only the hand or foot. It will be used in an unshielded 400 SF examination room. Its use will be limited to patients of this private practice. The project does not contain any other medical equipment or initiate or discontinue any other health service; and it will not affect any licensed bed complements. The unit does not require licensure as a healthcare facility.

\$ 434,950.00

DEPARTMENT OF PERSONNEL - 1120**BEFORE AN ADMINISTRATIVE JUDGE****PETITION FOR DECLARATORY ORDER****NOTICE OF HEARING****AND****NOTICE TO POTENTIALLY INTERESTED PERSONS**

Paula Shaw, formerly a Motor Vehicle Commission Field Investigator with the Department of Commerce and Insurance, has filed a Petition for Declaratory Order pursuant to Tennessee Code Annotated Section 4-5-223 and the Uniform Rules for Hearing Contested Cases Before State Administrative Agencies, Tenn. Comp. R. & Reg. 1360-4-1-.07. This Notice is filed pursuant to Tennessee Code Annotated Section 4-5-224.

1. Petitioner's Name: Paula Shaw
2. Petitioner's Attorney: Shearon Hales
Staff Attorney
Tennessee State Employees' Association
627 Woodland Street
Nashville, TN 37206
615-256-4533
3. Organization, if any, that Petitioner represents: N/A
4. Summary of Relief Requested:

Petitioner requests that the Department of Personnel declare that (1) Petitioner meets the minimum qualifications, including the required period of work experience, for the job classification of Regulatory Boards Investigation Assistant Director; and (2) Petitioner's name remain on the statewide register for the job classification of Motor Vehicle Commission Field Investigator Supervisor or, if that register has been abolished, an order and declaration be issued stating what notification and process was used regarding the Petitioner and any others who were listed on such register.

5. Statutes and rules that are the subject of the Petition:

Tennessee Code Annotated Section 8-30-202(a)
Tenn. Comp. R. & Reg. 1120-2-.05(8) & 1120-2-.06(3) – (6).

A hearing has been scheduled for October 26 and 27, 2004, at 9 a.m. before an administrative judge in the Marshall Conference Room, 3rd Floor, Tennessee Tower, 312 8th Avenue North, Nashville, TN 37243.

If you have questions, you may contact the Petitioner's attorney at the address and telephone number listed at the beginning of this notice.

The State's attorney usually files the notice information with Publications. However, Ms. Carpenter had such a volume of cases that APD agreed to assist her with the filing. If you have any questions re: the notice information, either Ms. Carpenter can help you or I can. Ms. Carpenter is copied on this email.

Thank you.

Judge Joyce Grimes Safley
APD
312 8th Avenue North, 8th Floor
Snodgrass Tennessee Tower
Nashville, Tennessee 37243
Direct line: (615) 532-8752
Fax: (615) 741-4472
E mail: Joyce.Safley@state.tn.us

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency rules regarding Vesicular Stomatitis - Chapter 0080-2-1 Health Requirements for Admission tTransportation of Livestack and Poultry, 8 T.A.R. (August 2004) - Filed July 16, 2004; effective through December 28, 2004. (07-16)
- 1200 - Department of Health - Bureau of Health Services Administration - Communicable and Environmental Disease Services - Emergency rules covering reporting of diseases to public health authorities, chapter 1200-14-1, Communicable Diseases, 6 T.A.R. (June 2004) - Filed May 26, 2004; effective through November 7, 2004. (05-23)

THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION – 1200 DIVISION OF SUPERFUND

CHAPTER 1200-1-19

STANDARDS FOR TESTING AND CLEANING CLANDESTINE DRUG MANUFACTURING SITES

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C. A. 4-5-208. I am promulgating emergency rules providing standards for testing and cleaning clandestine drug manufacturing sites. The emergency rules are necessary because of Chapter 855 of the Public Acts of 2004.

I have made a finding that there is an emergency creating an immediate danger to public health , safety and/or welfare in that there is not a standard to identify when a property is safe for human use after being contaminated from the clandestine drug manufacturing process. Further, the nature of this danger is such that any other form of rulemaking would not adequately protect the public. Over 500 clandestine methamphetamine manufacturing sites were identified by law enforcement agencies in 2003. Clandestine methamphetamine manufacturing sites use and generate many chemicals including iodine, red and yellow phosphorus, hydrochloric acid, freon, ether, benzene, ammonia, methanol, acetone, acetic acid, aluminum, chloroform, hydriodic acid, lithium, hydrogen peroxide, methylamine, methyl ethyl ketone, methylene chloride, naphtha, phosphoric acid, phosphine, sodium dichromate, caustic soda, sulfuric acid, sodium metal, and toluene. Infants, children, and adults are placed at risk during and after the manufacture of methamphetamine. Even after easily identifiable chemicals and residual wastes are removed, trace quantities of these substances and manufactured drugs remain.

This rule provides a professional certified by the commissioner with a basis for determining when a site used as a manufacturing site is safe for human use. Therefore, unless emergency rules establishing a standard for safe for human are adopted, there will be no standard for professional judgement. A qualified professional may be reluctant to assess a property without a standard for determination for whether it is safe for human use. Or if the determination is made unguided by certain standards, occupied sites will expose occupants to the uncertain judgment of each respective professional. Poorly cleaned properties will be placed into service at hotels, motels, rented homes, and private residences. Additionally, local law enforcement officials may be reluctant to quarantine property in absence of a standard so that an owner can remove the quarantine by clean up and testing. Further, local courts granted jurisdiction to remove quarantines placed on property which has been used in the manufacture of methamphetamines would lack guidance in legal proceedings for removal of quarantine, thus posing possible risks to public health, safety or welfare from decisions made without standards.

For additional information on proposed rules, contact: Jim Haynes, Director, Division of Superfund, Department of Environment and Conservation, 4th Floor, L&C Annex, 401 Church Street, Nashville, Tennessee, 37243-1538, 615-532-0227.

Betsy L. Child
Commissioner
Environment and Conservation
State of Tennessee

CHAPTER 1200-1-19 STANDARDS FOR TESTING AND CLEANING QUARANTINED CLANDESTINE DRUG MANUFACTURING SITES

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1200-1-19-.01 Standards for Determining Living Space Safe Human Use	1200-1-19-.02 Use of Qualified Professionals for Sampling and for Cleanup
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1200-1-19-.01 STANDARDS FOR DETERMINING LIVING SPACE SAFE FOR HUMAN USE

- (1) Methamphetamine shall not exceed .1 microgram /100cm² on any hard surfaces.
- (2) Volatile Organic Compounds shall not exceed 1ppm in air as measured under normal inhabitable ventilation conditions.
- (3) If it is determined that lead or mercury were used in the lab process, the standard for cleanup of lead on any surface shall not exceed 40ug/ft², and mercury shall not exceed 50 nanograms/m³ for indoor air. Lead acetate and mercuric chloride are used in the Amalgam process that uses phenylpropanone (P2P). This process is not commonly used, but may occasionally be encountered.

1200-1-19-.02 USE OF QUALIFIED PROFESSIONALS FOR SAMPLING AND CLEANUP

- (1) Samples shall be collected and interpreted by a professional certified by the Commissioner as being able to perform the services of an industrial hygienist. Any person holding a certification from the American Board of Industrial Hygienists as a Certified Industrial Hygienist is deemed certified by this rule as being

able to perform these services. Other persons who have the qualifications as industrial hygienists under TCA § 62-40-101 may make a written request to the Commissioner to be included on the list of persons or entities entitled to perform the services of industrial hygienists for the purposes of these rules.

- (2) Clean up of properties shall be performed by a professional or company certified by the Commissioner as being able to perform the services of cleaning up sites used to manufacture methamphetamines. Any person holding a certification from the American Board of Industrial Hygienist as a Certified Industrial Hygienist is deemed certified by this rule as being able to perform clean up services at these sites. Other persons may make a written request to the Commissioner seeking certification to perform these services.

Authority: (Not currently codified) Public Chapter 855 of the Public Acts of 2004

The emergency rules set out herein were properly filed in the Department of State on the 18th day of August, 2004, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the day of 30th day of January, 2005. (08-58)

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pg. 22

PROPOSED RULES

THE STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-1-3 MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS

Presented herein is the proposed amendment of the State Board of Education submitted pursuant to T. C. A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate this amendment 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 amendment is published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendment, or submitted by a municipality which will be affected by the amendment, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed amendment, contact Debra E. Owens, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 532-3528.

The text of the proposed amendment is as follows:

AMENDMENT

Subpart (ii) of part 7 of subparagraph (e) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the subpart in its entirety and substituting instead the following language so that as amended the subpart shall read:

- (ii) English IV, Communication for Life

Subpart (iii) of part 7 of subparagraph (f) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the subpart in its entirety and substituting instead the following language so that as amended the subpart shall read:

- (iii) English IV, Communication for Life ****

**** This course satisfies the English IV credit required for graduation. The teacher shall have an endorsement in English 7-12. At local discretion, this course may be offered in place of English III instead of English IV.

Authority: T.C.A. §49-1-302.

(08-73)

CHAPTER 0520-1-9
SPECIAL EDUCATION PROGRAMS AND SERVICES

AMENDMENT

Subparagraph (a) of paragraph (1) of Rule 0520-1-9-.03 Administration of Special Education and Early Intervention Services is amended by adding the following language as part 3 so that as amended the part shall read:

3. Develop and collect data to meet the child find requirements under 34 CFR 300.125 subject to the confidentiality requirements of 0520-1-9-.01(13), (19) and (40) and 0520-1-9-.14(7).

Subparagraph (g) of paragraph (1) of Rule 0520-1-9-.03 Administration of Special Education and Early Intervention Services is amended by adding the following language as part 1 and part 2 so that as amended the parts shall read:

1. The Department must have a mechanism for serving children with disabilities if instructional needs exceed available personnel who meet appropriate professional requirements in the State for a special profession or discipline.
2. When shortages of qualified personnel exist, the Department shall address those shortages in its comprehensive system of personnel development under this section.

Part 1 of subparagraph (h) of paragraph (1) of Rule 0520-1-9-.03 Administration of Special Education and Early Intervention Services is amended by adding the following language as subpart (i) so that as amended the subpart shall read:

- (i) In implementing this section, the Department must adopt a policy that includes a requirement that school systems make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in 0520-1-2-.03, within three years.

Part 2 of subparagraph (h) of paragraph (1) of Rule 0520-1-9-.03 Administration of Special Education and Early Intervention Services is amended by adding the following language as subpart (i) so that as amended the subpart shall read:

- (i) The Department may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with 0520-1-9-.01(38), in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of the Individuals with Disabilities Education Act (IDEA).

Subparagraph (i) of paragraph (1) of Rule 0520-1-9-.03 Administration of Special Education and Early Intervention Services is amended by adding the following language as part 1 so that as amended the part shall read:

1. If there are discrepancies occurring in (i) above, the Department will review and, if appropriate, revise (or require the affected State agency or school system to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the IDEA.

Paragraph (1) of Rule 0520-1-9-.03 Administration of Special Education and Early Intervention Services is amended by adding the following language as subparagraph (n) so that as amended the subparagraph shall read:

- (n) The Department shall have on file with the Secretary information to demonstrate that the State:
1. Has established goals for the performance of children with disabilities that will promote the purposes of FAPE;
 2. Has established performance indicators that the Department will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;
 3. Every two years, the Department will report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under Part 1; and
 4. Based on its assessment of that progress, will revise its State improvement plan as may be needed to improve its performance.

Authority: T.C.A. § 49-1-302.

(08-74)

**CHAPTER 0520-1-9
SPECIAL EDUCATION PROGRAMS AND SERVICES**

AMENDMENT

Paragraph (7) of Rule 0520-1-9-.05 Referral, Initial Evaluation, and Reevaluation is amended by adding the following language as subparagraphs (a) and (b) so that as amended the subparagraphs shall read:

- (a) If the determination under paragraph (5) of this section is that no additional data are needed to determine whether the child continues to be a child with a disability, the local school system shall notify the child's parents of
1. that determination and the reasons for it; and
 2. the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability.
- (b) The local school system is not required to conduct the assessment described in (7)(a) unless requested to do so by the child's parents.

Paragraph (12) of Rule 0520-1-9-.05 Referral, Initial Evaluation, and Reevaluation is amended by adding the following language as the first sentence in the paragraph so that as amended the paragraph shall read:

- (12) The LEA shall administer tests and other evaluation materials as may be needed to produce the additional data identified under 0520-1-9-.95(5)(a). At a minimum, the local school system shall meet the following evaluation procedures:

Subparagraph (e) of paragraph (12) of Rule 0520-1-9-.05 Referral, Initial Evaluation, and Reevaluation is amended by deleting the subparagraph in its entirety and substituting instead the following language so that as amended the subparagraph shall read:

- (e) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.

Authority: T.C.A. § 49-1-302.

(08-75)

**CHAPTER 0520-1-9
SPECIAL EDUCATION PROGRAMS AND SERVICES**

AMENDMENT

Paragraph (2) of Rule 0520-1-9-.08 Provision of Free Appropriate Public Education (FAPE) is amended by adding the following language as subparagraph (f) so that as amended the subparagraph shall read:

- (f) If a local school system is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the local school system may use its Part B funds to pay for the service.

Paragraph (1) of Rule 0520-1-9.09 Composition of the IEP Team is amended by adding the following language as subparagraph (h) so that as amended the subparagraph shall read:

- (h) A local education agency may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph (d) of this section is satisfied.

Subparagraph (e) of paragraph 4 of Rule 0520-1-9-.10 Development of the IEP is amended by adding the following language as part 1 so that as amended the part shall read:

1. In implementing the requirements of paragraph (e), the local education agency shall:
 - (i) provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
 - (ii) if the parents choose an IFSP, obtain written informed consent from the parents.

Paragraph (1) of 0520-1-9-.12 Least Restrictive Environment (LRE) and Placement is amended by adding the following language as subparagraphs (d), (e), and (f) so that as amended the subparagraphs shall read:

- (d) The Department shall carry out activities to ensure that teachers and administrators in all local school systems:

1. Are fully informed about their responsibilities for implementing General LRE requirements; and
 2. Are provided with technical assistance and training necessary to assist them in this effort.
- (e) The Department shall carry out activities to ensure that 0520-1-9-.12(1) is implemented by each local education agency.
- (f) If there is evidence that a local education agency makes placements that are inconsistent with the General LRE requirements, the Department shall:
1. Review the local education agency's justification for its actions; and
 2. Assist in planning and implementing any necessary corrective action.

Rule 0520-1-9-.12 Least Restrictive Environment (LRE) and Placement is amended by adding the following language as paragraph (4) so that as amended the paragraph shall read:

- (4) Except as provided in 0520-1-9-.03(1), the Department will ensure that 0520-1-9-.12(1) is effectively implemented; including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

Authority: *T.C.A. § 49-1-302.*

(08-76)

The proposed amendments set out herein were properly filed in the Department of State on the 30th day of August, 2004, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 29th day of December, 2004. (08-73 through 08-76)

TENNESSEE HIGHER EDUCATION COMMISSION - 1540**CHAPTER 1540-1-4****PUBLIC HIGHER EDUCATION FEE WAIVERS FOR STATE EMPLOYEES**

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

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

AMENDMENTS

Chapter 1540-1-4 is amended by deleting the current rules in their entirety and replaced with the following new rules. The text of the proposed rules is as follows:

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1540-1-4-.01 Definitions	1540-1-4-.03 Limitations
1540-1-4-.02 Eligibility	1540-1-4-.04 Appeal Procedures

1540-1-4-.01 DEFINITIONS

- (1) **Course:** Undergraduate or graduate credit courses at a state supported college or university, to certificate or diploma credit courses at the technology centers, or any course offered by the TFLI.
- (2) **Full-time employee of the State of Tennessee or Employee:** Employee of the executive, judicial or legislative branches of Tennessee state government scheduled to work one thousand nine hundred and fifty (1,950) hours or more per year.
- (3) **Member of the General Assembly:** Individual currently holding office as a member of either the House of Representatives or Senate and elected pursuant to Article II of the Tennessee Constitution.
- (4) **State supported college or university or technology center or Institution:** Any institution operated by the University of Tennessee or the Tennessee Board of Regents which offers courses of instruction beyond the high school level.
- (5) **Tennessee Foreign Language Institute or TFLI:** Foreign language institute established by Tennessee Code Annotated Title 49, Chapter 50, Part 13.
- (6) **Term:** The time frame in which a course is offered by the Institution, and for purposes of these rules includes Fall, Spring, Summer and special session terms, as defined by the individual universities and colleges. It is the intent of these rules that over the course of special session terms and the two Summer

semester terms an employee or member of the General Assembly will be limited to no more than two courses, the instruction periods of which shall not overlap. For the technology centers and the TFLI, “term” refers to a three month reporting period. The four terms are:

July 1 - September 30 October 1 - December 31 January 1 - March 31 April 1 - June 30

- (7) Fees that are waived by this program are defined as follows:
- (a) Debt service fee: A fee charged to students for the retirement of indebtedness that may be included in the maintenance fee charges.
 - (b) Maintenance fee: A fee charged to students enrolled in credit courses. It is an enrollment or registration fee and is calculated based on the number of student credit hours for which the student enrolls.
 - (c) Registration fee: Maintenance fee as described above.
 - (d) Student activity fee: A fee charged to students in addition to tuition and maintenance fees that is based on the credit hour enrollment of the student. Some institutions include the student activity fee in the maintenance fee rather than as a separate charge. The student activity fee supports health services, athletics, student newspapers and social and cultural events.
 - (e) Tuition charge: A fee charged to students classified as non-residents in addition to the maintenance fee.

1540-1-4-.02 ELIGIBILITY

- (1) A full-time employee of the State of Tennessee or a member of the General Assembly shall be eligible to enroll in one course per term at any state supported college, university or technology center, or the Tennessee Foreign Language Institute without paying the tuition charge, maintenance fee, student activity fee, or registration fee.
- (2) Eligibility for the fee waiver shall be determined as of the respective Institutions’ or TFLI’s first day of classes for the term. To receive the fee waiver, the Employee or the member of the General Assembly must be eligible for enrollment at the Institution for which a fee waiver is sought according to the academic rules and regulations of the Institution or the TFLI. The employee must also have six months or more of continuous service as a full-time employee to receive the fee waiver. A change in employment status after the first day of classes will affect eligibility for the fee waiver only for subsequent terms.

1540-1-4-.03 LIMITATIONS

- (1) Fee waivers are limited to one course per term. Fees will not be waived for non-credit or correspondence courses. Employees are not eligible for fee waivers at more than one Institution per term. For the purposes of this paragraph, the term “Institution” shall include the TFLI.
- (2) Fees and charges which will not be waived include the cost of books or other course materials which are retained by the student, application fees, off-campus facilities fees, parking fees, traffic fines, and fees assessed that are applied to the cost of the course or which directly support the department offering the course such as applied music fees, lab fees, fees assessed to offset the cost of offering distance education courses or courses offered in a particular discipline.

- (3) Fees will not be waived for programs for which part-time or course by course enrollment is prohibited as determined by the Institutions. Examples include, but are not limited to, programs of law, medicine, dentistry, pharmacy, and veterinary medicine.
- (4) The fee waiver program described in this Chapter may not be used in conjunction with any other fee waiver or discount program.
- (5) At the time of enrollment, the Employee must have a completed state employee fee waiver form signed by his or her employer certifying that the applicant is a full-time employee with at least six months of continuous service. Forms are available at the higher education institutions or on the Commission's website, <www.state.tn.us/thec>.
- (6) Enrollment may be limited or denied by the college, university, technology center, or the TFLI on an individual basis according to space availability.
- (7) No tuition paying student shall be denied enrollment in a course because of state employee enrollments pursuant to this Act.
- (8) Rights and privileges provided to full-time employees of the state university and community college system and the University of Tennessee pursuant to T.C.A. § 49-7-116 shall not be affected or diminished by the Act.
- (9) The Higher Education Commission shall develop a methodology for allocating appropriations to reimburse Institutions and the TFLI for fees waived pursuant to this program.

1540-1-4-.04 APPEAL PROCEDURES

Appeals regarding the determination of eligibility of the applicant will be available in a manner consistent with institutional procedures now in place for admissions decisions.

Authority: T.C.A. §8-50-114

The proposed rules set out herein were properly filed in the Department of State on the 31st day of August, 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 29th day of December, 2004. (08-80)

TENNESSEE HIGHER EDUCATION COMMISSION - 1540

CHAPTER 1540-1-5

**PUBLIC HIGHER EDUCATION FEE DISCOUNTS FOR CHILDREN
OF LICENSED PUBLIC SCHOOL TEACHERS AND STATE EMPLOYEES**

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

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

AMENDED RULES

Chapter 1540-1-5 is amended by deleting the current rules in their entirety and replaced with the following new rules. The text of the proposed rules is as follows:

TABLE OF CONTENTS

1540-1-5-.01	Definitions	1540-1-5-.03	Limitations
1540-1-5-.02	Eligibility	1540-1-5-.04	Appeal Procedures

1540-1-5-.01 DEFINITIONS

- (1) Children under the age of twenty-four (24): Dependent children, twenty-three (23) years of age or younger, of certified public school teachers or employees of the State of Tennessee who are:
 - (a) The natural children or legally adopted children of the teacher or state employee.
 - (b) The stepchildren of the teacher or state employee living with the teacher or state employee in a parent/children relationship.
 - (c) Otherwise eligible and living in a parent/children relationship with the teacher or state employee, such as children of deceased parents who are being raised by a grandparent who is employed as a teacher or state employee.
 - (d) Children, as described in (a) through (c) above, of a teacher who died while employed as a public school teacher, and who are utilizing the benefit at the time of the parent/teacher's death.

- (2) Certified teacher in any public school in Tennessee or Teacher: Teacher, supervisor, principal, superintendent and other personnel who is licensed by the Tennessee Department of Education or by a branch of the U.S. Armed Forces to teach Reserve Officer Training Corps, and employed by any local board of education, for service in public, elementary and secondary schools in Tennessee supported in whole or in part by state funds.

- (3) Deceased state employee: Person who at the time of their death was a full-time employee of the State of Tennessee.
- (4) Full-time teacher or Teacher: School employee whose position requires them to be on the job on school days throughout the school year at least the number of hours during which schools in the local board of education are in session.
- (5) Full-time supervisors principal, superintendent and other personnel: School employee who is licensed by the Tennessee Department of Education whose current assignments, regardless of their classification, requires his or her services each working day at least a number of hours equal to a regular working day.
- (6) Full-time employee of the State of Tennessee: Employee of the executive, judicial, or legislative branches of Tennessee state government scheduled to work one thousand nine hundred and fifty (1,950) hours or more per year.
- (7) Maintenance fee: A fee charged to students enrolled in credit courses. It is an enrollment or registration fee and is calculated based on the number of student credit hours for which the student enrolls. Alternatively, at technology centers this term refers to program fees. Tuition does not include application for admission fees, student activity fees, debt service fees, lab fees, applied music fees, the cost of books or other course materials, dormitory charges, or meal plans.
- (8) Retired state employee: Employee of the State of Tennessee who retires after a minimum of twenty-five (25) years of full-time creditable service, although he or she may be deceased at the time the children seeks the benefit provided by this chapter.
- (9) State operated institution of higher learning or Institution: Any institution operated by the University of Tennessee or the Tennessee Board of Regents which offers courses of instruction beyond the high school level.

1540-1-5-.02 ELIGIBILITY

- (1) The successful applicant for a student fee discount must meet all of the following:
 - (a) Be twenty-three (23) years of age or under;
 - (b) Be a child of a teacher or state employee or deceased state employee in Tennessee as defined in this chapter;
 - (c) Be eligible according to the regulations in this chapter; and
 - (d) Be eligible for enrollment at the institution for which a student fee discount is sought according to the academic rules and regulations of the institution.
- (2) Eligible children may enroll in any number of courses up to and including full-time study.
- (3) Fee discounts are only available for courses classified as undergraduate as defined by the institutions.
- (4) Eligibility for the discount will be based on the employment status of the teacher or state employee and the age of the child on the first day of classes for the term as determined by the institution. A change in employment status or the child's age after the first day of classes will affect eligibility for the discount only for subsequent terms.

- (5) At the time of enrollment, the student must present a completed form for children of teachers or state employees certifying eligibility to receive a tuition discount. This form must be signed by the teacher or state employee, his or her employer, and the student. Forms are available at the public higher education institutions or at the Commission's website <www.state.tn.us/thec>. Children of retired state employees must have this form signed by a designated official of the State Treasury Department, Division of Retirement to verify that the identified state employee has retired with a minimum of twenty-five (25) years of creditable service. For children of state employees killed on the job or in the line of duty, the form must be signed by a designated official of the state agency at which the employee was last employed.

1540-1-5-.03 LIMITATIONS

- (1) Fee discounts will not be retroactive for prior terms. Fee discounts are available only by application and should be approved prior to the beginning of the term for which a discount is being sought.
- (2) The fee discount described by this chapter may not be used in conjunction with any other fee waiver or discount program. No eligible child shall receive a discount greater than twenty-five percent (25%) for any one term under the provisions of the programs described by this chapter.
- (3) The Higher Education Commission shall develop a methodology for allocating appropriations to reimburse institutions for actual fee discounts provided pursuant to this program.

1540-1-5-.04 APPEAL PROCEDURES.

Appeals regarding the determination of eligibility of the applicant will be available in a manner consistent with institutional procedures now in place for admissions decisions.

Authority: T.C.A. §§8-50-115 and 49-7-119.

The proposed rules set out herein were properly filed in the Department of State on the 31st day of August, 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 29th day of December, 2004. (08-82)

THE TENNESSEE BOARD OF REGENTS - 0240
STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE

SYSTEMWIDE STUDENT RULES

CHAPTER 0240-2-2
CLASSIFYING STUDENTS IN-STATE AND OUT-OF-STATE

Presented herein are proposed amendments of the Tennessee Board of Regents submitted pursuant to Tennessee Code Annotated, § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Board of Regents to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in Suite 350 of the Genesco Park Building located at 1415 Murfreesboro Road, Nashville, TN 37217 and in the Department of State, Eighth Floor, William R. Snodgrass Tower, 312 Eighth Avenue, North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Mary M. Slater, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217, Tennessee Board of Regents, 615-366-4438.

2004 SUMMARY OF
INSTITUTIONAL & SYSTEMWIDE RULE REVISIONS

SYSTEMWIDE RULE REVISIONS

SYSTEMWIDE STUDENT DISCIPLINARY RULES

The Literature Distribution or Sale rule in the Student Disciplinary rules is amended by adding the following language regarding obscene material: For the purposes of this provision and as defined by Tennessee law, “obscene material” or “obscene literature” shall mean any literature or material that: (A) the average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest (“prurient interest” means a shameful or morbid interest in sex) in sex; (B) the average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct (“patently offensive” means that which goes substantially beyond customary limits of candor in describing or representing such matters and “sexual conduct” means representations or descriptions of ultimate sexual acts including sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy, normal or perverted, actual or simulated; or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals); and (C) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The definition of Domicile in the systemwide rules is amended to clarify that an undocumented alien cannot establish domicile in Tennessee, regardless of length of his / her residence in Tennessee.

The Out-of-State Students Who Are Not Required To Pay Out-of-State Tuition Rule is revised by deleting the language in the existing rule that reads as follows: “[P]rovided, however, that there be no teacher college or normal school within the nonresident’s own state, of equal distance to said non-resident’s bona fide place residence” to achieve consistency with recent revisions to TBR 3:05:01:00.

The section of the rule outlining Disciplinary Offenses is amended by adding language which provides that any form of disruptive behavior in the classroom, during any institutional event or activity, or at any facility controlled or owned by the institution is a form of student misconduct. Additionally a new offense, the violation of imposed disciplinary sanctions, is included in the revised rule. This offense is defined as the intentional or unintentional violation of a disciplinary sanction officially imposed by an institution or school official or a constituted body of the institution or school. The following are also included in the revised rule as new Disciplinary Offenses: (1) Harassment. Any act of harassment by an individual or group against a student, faculty member or another group. Harassment shall include, but not be limited to insults, heckling, verbal abuse, threats of physical abuse, unwanted suggestions of a sexual nature, repeated teasing or annoyance to another, repeated unsolicited phone calls made with the intent to harass, or other actions considered disturbing to others; (2) Pets. With the exception of “service animals” and the exception of animals used for academic research purposes, animals are prohibited on institution or school owned or controlled facilities. The term “service animal” is defined as any animal individually trained to do work or perform tasks for the benefit of a person with a disability (e.g., a guide dog, signal dog, etc.). “Service animals” perform some of the functions and tasks that the individual with a disability cannot perform on his or her own. The institution or school may require reasonable documentation that the individual seeking the assistance of a “service animal” while on the premises, provide appropriate certification of the medical necessity for the same prior to approval; and (3) Filing a false complaint or statement. Any behavior whereby a student knowingly submits a false complaint or statement alleging a violation of these regulations by a student, organization, or institution or school employee.

The rule pertaining to Alcoholic Beverages is amended by adding the following language: “[T]his offense includes the violation of any local ordinance or state, or federal law concerning alcoholic beverages, on or off institution or school owned or controlled property, where an affiliated group or organization has alcoholic beverages present and available for consumption.”

The Academic and Classroom Misconduct rule is amended by the addition of new paragraphs which provide that the following behaviors are violations of the institution’s academic conduct rules: (1) disruptive behavior that obstructs the learning environment (e.g., offensive language; harassment of students and professors; conduct that prevents the concentration of the subject taught; continued use of any electronic or other noise or light emitting devices which disturbs others (e.g., disturbing noises from beepers, cell phones, palm pilots, etc.)) and (2) failure to regularly attend class (or present a valid excuse to the professor to explain the reason for absence(s) from class. The second new violation provides that the class attendance and punctuality requirements are contracted between the faculty and the students and printed in the syllabus for each course.

The following are included as new Disciplinary Sanctions in the amended systemwide student disciplinary rules: (1) Housing Probation. A resident placed on housing probation is deemed not to be in good standing with the housing community, and his/her continued residence is conditioned upon adherence to these Regulations and the Housing Contract. Any resident placed on probation shall be notified in writing of the terms and length of the probation. Parents may be notified. Any conduct of a similar or more serious nature in violation of the probation shall result in suspension from housing; (2) Housing Suspension and Forfeiture. A resident suspended for housing may not reside, visit, or make any use whatsoever of a housing faculty or participate in any housing activity during the period for which the sanction is in effect. A suspended resident shall be required to forfeit housing fees (including any unused portion thereof and the Housing Deposit). A suspended resident must vacate the housing unit within forty-eight (48) hours. Housing suspension shall remain a part of the student’s disciplinary record. Parents may be notified; (3) Service to the University. A student may be required to donate a specified number of service hours to the University, by way of performing reasonable tasks for the appropriate University office or officials. This service shall be commensurate to the offense the student is guilty of violating (i.e., service for maintenance staff for defacing University property); (4) Special Educational Program. A student may be required to participate in any special educational programs relevant to the offense, to attend special seminars or educational programs, or to prepare a project or report concerning a relevant topic; (5) Fines. Penalties in the form of fines may be enforced against a student or an organization whenever the appropriate hearing officer(s) or hearing body deems appropriate. The sanction of fines may be imposed in addition to other forms of disciplinary sanctions. Failure to pay fines to the Business Office within two weeks of the decision will result in further disciplinary action.

SYSTEMWIDE STUDENT RESIDENCE REGULATIONS AND AGREEMENTS

The general provisions of the student residence rules are amended to clarify that institutions retain the authority to segregate students in on-campus housing facilities on the basis of sex and that the exercise of that authority shall not constitute illegal discrimination.

Systemwide Residence Hall Visitation Policy

The visitation policies and procedures section of the Residence Hall Visitation Policy is amended to provide that student residents of on-campus housing facilities are required to properly monitor their guests (of both genders) who are present in the residential facilities.

Systemwide Certificate of Draft Registration Rule

The section of the rule that requires male applicants to certify their registration for the federal draft with the U.S. Selective System is amended by adding a provision that male students may provide a valid reason for not registering for the federal draft on their application for admission. The rule formerly read that male applicants had to certify that they were registered for the federal draft to be eligible for admission (as required by Tennessee law) and there was no option to provide an explanation for the basis of their failure to register for the federal draft (should an applicant have a valid reason for his failure to register).

Several revisions are included in the systemwide rules to provide accurate references to the cited sections of the Tennessee Code Annotated and TBR Policies.

AUSTIN PEAY STATE UNIVERSITY**Student Disciplinary Rules**

The section of the Disciplinary Procedure outlining the Composition of the University Hearing Board is revised to provide that of the five (5) students who will serve on the Board, three (3) of the students will be selected at-large from the general student body (formerly all five (5) students were selected from the Justices of the Student Tribunal). The three (3) students selected at-large shall meet the same minimum academic criteria as their peer members who serve on the Student Tribunal and they shall be selected in accordance with the procedures in the Student Government Association Constitution. The amended rule also provides for the inclusion of five (5) members of the student body to serve as alternative members of the University Hearing Board.

The General Provisions of the Traffic and Parking Regulations are amended to provide that parking in the faculty / staff parking spaces associated with any on-campus housing is enforced on a twenty-four (24) hour basis and are not open to general access during any specified time period. All non on-campus housing faculty / staff parking spaces continue to remain open for general access when the institution is officially closed. Language is added to the Towing and Impoundment section of the rules to provide that a vehicle is subject to towing if it could not be immobilized previously due to mechanical or technical reasons, the operator was warned that the next offense would result in towing; and following that, the vehicle was subsequently found in violation again.

Student Housing Rules

The Student Housing Rules are amended to omit several provisions delineating Student Residence Hall Conduct because the information is included in the “Notes for Living” Handbook that is distributed to all students who reside in on-campus housing. The rule explaining the institution’s right to search a residence unit with the consent of any occupant of the unit, or without such consent upon a finding of probable cause, and the issuance of an authorization to search by the appropriate University official or by any court with jurisdiction is revised to provide that any member of the unit may grant consent to a search of the entire unit, including any areas that are restricted for the exclusive use of other occupant(s) of the unit.

EAST TENNESSEE STATE UNIVERSITY

Student Disciplinary Rules

The rules are amended by several non-substantive, title revisions that include substituting the title “Senior Associate Vice President for Student Affairs and Dean of Students” to “Assistant Dean of Students,” and replacing the title “Assistant Vice President for Student Life and Leadership” to “Director of Student Activities.”

There are no proposed revisions to the Traffic and Parking Regulations.

Student Housing Rules

No changes.

MIDDLE TENNESSEE STATE UNIVERSITY

Student Disciplinary Rules

No changes.

There are no proposed revisions to the Traffic and Parking Regulations.

Student Housing Rules

The Student Residence Hall Conduct rules are amended to remove the exception that students are permitted to access sun decks as there are no longer any on-campus housing facilities with sun decks. Therefore, the revised rule provides that the roofs and ledges of residence halls are off limits. The rules include the addition of a new provision that designates the tampering and/or removal of window screens as a violation for which a student will be assessed an appropriate replacement cost. A new section is added to the rule regarding the direct data access that students have to the internet in their on-campus residences via Ethernet jacks. This section explains that students are bound to adhere to the MTSU “Computer and Network Acceptable Use Policy” when using the Ethernet jacks in their residence units (as is required on all computers on campus). An additional new section, “Removal of Personal Property,” is added to the rules to explain the procedure by which the institution will remove the personal property of a resident of on-campus housing. In the rule the institution retains the right to remove a student’s personal property from his /her housing unit and store the belongings (at the student’s expense for at least thirty (30) days after which time the institution may dispose of the property) in the event of (1) his/her withdrawal from classes; (2) the termination of the housing license agreement; or (3) his /her relocation to another designated residence unit. The institution will provide written notice to any student who will be subject to the provisions of this notice by delivery to the student’s University address and/or permanent postal address.

TENNESSEE STATE UNIVERSITY

Student Disciplinary Rules

The Academic and Classroom Misconduct rule is amended by the addition of new paragraphs that provide that the following behaviors are violations of the institution's academic conduct rules: (1) disruptive behavior that obstructs the learning environment (e.g., offensive language; harassment of students and professors; conduct that prevents the concentration of the subject taught; continued use of any electronic or other noise or light emitting devices which disturbs others (e.g., disturbing noises from beepers, cell phones, palm pilots, etc.)) and (2) failure to regularly attend class (or present a valid excuse to the professor to explain the reason for absence(s) from class. The second violation regarding class attendance explains that the class attendance and punctuality requirements are contracted between the faculty and the students and printed in the syllabus for each course.

There are no proposed revisions to the Traffic and Parking Regulations.

Student Housing Rules

No changes.

TENNESSEE TECHNOLOGICAL UNIVERSITY

Student Disciplinary Rules

The section of the Disciplinary Offenses related to Alcoholic Beverages is revised to provide that the following are offenses of the institution's rules if the conduct occurs on institutional property or at an affiliated clinical site (in addition to the existing prohibition against the use and/or possession of alcoholic beverages on University owned or controlled property): (1) the distribution, sale, manufacture of alcoholic beverages and (2) public intoxication. The revised rule refers to students' duty to adhere to the Tennessee Technological University Drug-Free Schools & Communities Policy Statement. The section related to the impermissible use of Drugs on campus is revised in a similar manner to include the illegal use of over-the-counter and/or prescription drugs and references to clinical affiliation sites and the institution's Drug-Free Schools & Communities Policy Statement.

The Academic and Classroom Misconduct rule is amended by the addition of new paragraphs that provide that the following behaviors are violations of the institution's academic conduct rules: (1) disruptive behavior that obstructs the learning environment (e.g., offensive language; harassment of students and professors; conduct that prevents the concentration of the subject taught; continued use of any electronic or other noise or light emitting devices which disturbs others (e.g., disturbing noises from beepers, cell phones, palm pilots, etc.)) and (2) failure to regularly attend class (or present a valid excuse to the professor to explain the reason for absence(s) from class. The second violation regarding class attendance explains that the class attendance and punctuality requirements are contracted between the faculty and the students and printed in the syllabus for each course.

The Disciplinary Sanctions section of the rules is amended to include four (4) additional forms of permissible sanctions that may be imposed on a student or an organization upon a determination that a violation of the rules occurred. The first new sanction is the requirement that the offending student(s) or organization(s) complete a constructive or educational project that is beneficial to the individual, campus, and/or community. The work will be commensurate to the disciplinary offense for which the student is responsible. The second new sanction is the imposition and successful completion of alcohol and drug counseling/ rehabilitation for nursing students and all students enrolled in the allied health programs. The third sanction is probation from the residential life community which provides that a student resident of University owned or controlled residence unit who is deemed not to be in good standing with the Residential Life Community may have his/her continued residence contingent on compliance with the student code of conduct and residential life agreement. The final new sanction provides for a student resident's permanent separation from the University owned or controlled housing facilities. A student who is subject to this sanction, residential life suspension, may not reside in, visit, or make any use whatsoever of a residential life facility, and he/she must vacate his/her unit within forty-eight (48) hours of the official suspension notice and must forfeit any payments. Conditions for the student's readmission to the University Residential Life may be specified at the time of the suspension.

The section of the University Disciplinary Procedure outlining the Composition of the University Student Judicial Council is revised to increase the number of student members from seven (7) to nine (9), all of whom shall be members of the Student Government Association.

There are no proposed revisions to the Traffic and Parking Regulations.

Student Housing Rules

The University Student Housing Visitation Policy is revised to provide that residents are permitted to host guests of both genders on a twenty-four (24) hour basis, unless the residence hall / apartment building is otherwise designated as a limited visitation facility because not all of the University residence facilities are open to twenty-four (24) visitation. The amended Visitation Policy includes a reference to the authority of the Director of Residential Life to designate some residence facilities as non-visitation to members of the opposite gender. The procedure by which students may be released from their housing license agreement by requesting a buy out is revised to provide that students must not have taken possession of the room prior to filing the request (formerly students were permitted to request a buy out *after* moving out of the residential unit). The general rule related to smoking in University residential facilities is revised to expand the prohibition of smoking in / around residence facilities from only public areas of the facilities to the entire facility and within fifty (50) feet of any point of entry to thereto.

There were several non-substantive revisions to reflect the changes in the designation of the residence life office and university administrators' titles.

UNIVERSITY OF MEMPHIS

Student Disciplinary Rules

The Proscribed Conduct section of the rules is revised to expand the description of Physical Abuse to include the harassment (verbal or sexual) of others and or threatening or dangerous behavior that endangers the health or safety of the others or oneself. The use, possession, manufacture of or distribution of illegal drugs and/or drug paraphernalia as prohibited by law is included as an expansion of the existing offense related to narcotics. The amended rules include the failure to abide by emergency or fire evacuation procedures and/or tampering with fire alarms / equipment as category of proscribed conduct. The duration of time after which the University may expunge a student's confidential disciplinary records (other than residence hall expulsion) is extended in the revised rule from one (1) year to five (5) years.

The Traffic and Parking Regulations are revised to provide that all of the traffic / parking regulations delineated in the rules will be enforced at all times (formerly the regulations were not enforced on official holidays / administrative closings). The amended rules clarify that a valid University of Memphis parking permit is a properly displayed hang tag or bumper sticker that is issued pursuant to the University's three (3) year cycle with validation stickers issued to students each semester. Parking is available on the University campus based on the designation of individual permits and the amended rules outline the access to the priority, disabled (disabled permits are only issued with the presentation of a valid physician's note under the new rule), and general parking areas. Students and employees are no longer permitted to park in metered parking spaces pursuant to the revision to the Parking Meters section of the regulations as those spaces are generally designated for Visitors or Emeriti. A new provision to the Parking Permits section of the regulations pertaining to garage parking provides that students, faculty, staff, and visitors who park designated university parking garages without permit access will be charged an hourly rate or all-day rate. Permit access to the parking garages is available for a fee. Illegal Entry is added as a moving violation that is described as entry into gated lots on university property by tailgating other vehicles and/or illegally driving on sidewalks and / or grounds to gain access.

Language is added to the Towing / Storage section of the rules to provide that a vehicle is subject to towing if it is hindering the movement of emergency vehicles (in addition to the existing designation of blocking a fire lane or fire hydrant (within 15 feet)). The expiration of a parking permit, parking on a sidewalk or grounds, and blocking a driveway are included as new parking violations for which individuals may be subject to a fine of fifteen dollars (\$15.00) per violation. The violation of illegal entry into a gated access parking lot is included in the new rules with a penalty of one hundred dollars (\$100.00) per violation. The fine for speeding was reduced from fifteen dollars (\$15.00) to ten dollars (\$10.00).

Several non-substantive, editorial revisions to the amendments were included in the Traffic and Parking Regulations in addition to the update of the name of the appropriate office and the title of university employee to contact to initiate the traffic citation appeal process.

Student Housing Rules

The Reservations (Deposit, Cancellation and Refund Policies) Rule is amended to require students to submit a non-refundable \$200.00 deposit (formerly a refundable \$100.00 deposit) within two (2) weeks of receipt of written notice of their on-campus housing application or at the time of move-in (whichever occurs first). The revised rule outlines the housing application and assignment process. The Refund Policy section of the rule is omitted as the University no longer refunds housing payments. The payment system to which on-campus student residents must adhere is delineated in the revised rules, as are the deadline dates by which a student must provide notice that she/he will not renew the housing agreement (Spring Semester – Nov. 1; Summer Session – May 1; Fall Semester – July 1). The revised rule provides that if students fail to vacate a housing unit prior to the first day of a new semester, they are responsible for payment of the rent for that unit for the duration of the semester. Students are eligible for refunds of their housing fees in the case of a legitimate hardship (e.g., documented medical reasons, denial of admittance to the University, untimely payment of rent, and in the case of a student's death).

The special regulations applicable to Student Family Housing are revised as follows to include the permissible number of individuals who may reside in a single university owned housing unit:

- (A) One (1) bedroom unit – No more than two (2) adults and one (1) child, *or*
one (1) adult and (2) children
- (B) Two (2) bedroom unit – No more than 2 adults and 2 children

The Family Housing units are restricted to those students who: (1) are married; (2) have dependent children who will reside in the unit; or (3) are single law students.

CHATTANOOGA STATE TECHNICAL COMMUNITY COLLEGE

Student Disciplinary Rules

No changes.

CLEVELAND STATE COMMUNITY COLLEGE

Student Disciplinary Rules

The Traffic and Parking Regulations are amended to omit the requirement that faculty and staff are restricted to parking only in designated faculty / staff parking areas. The Registration Violations section of the rule is revised to provide that it is no longer a violation of institutional rules for an individual to affix a parking decal to a vehicle other than the vehicle to which it is registered. Parking Violations at the institution are expanded to include that parking is not permitted in spaces marked “service vehicles” and crosswalks in addition to the existing prohibition against parking in areas marked “no parking” / “loading zones” and in spaces reserved for the handicapped. The amended rules clarify that the parking and traffic rules will be enforced by the assessment of ten dollars (\$10.00) per incident for the violation of any of the rules (excluding parking in a reserved space for the handicapped which is a one hundred dollar (\$100.00) fine as required by Tennessee law). Pursuant to the revised rules the payment of parking violation fines must be remitted within fifteen (15) days of issuance of the citation. The revised rules specify that the display of the parking decal hang tag is on rearview mirror.

COLUMBIA STATE COMMUNITY COLLEGE

Student Disciplinary Rules

The Academic and Classroom Misconduct rules are revised to include the following new provisions: (1) any student who is found guilty of an act of misconduct may be subjected to one or more of the following penalties: (a) his or her grade in the course or on the examination affected by the misconduct may be reduced to an extent, including a reduction to failure, (b) he or she may be suspended from the college for a specific or an indefinite period, (c) he or she may be dismissed from the college immediately, at the end of any session ending in the future, or retroactively as of the end of any session during which the act of misconduct was committed; (2) in cases of academic misconduct, the student may appeal, in writing, the action of the instructor to the division chair and finally to the vice president for academic services may appoint a committee to review and resolve the issue; (3) disruptive behavior in the classroom is prohibited and it is defined as, but is not limited to, behavior that obstructs or disrupts the learning environment (e.g., offensive language, harassment of students and professors, the creation of disturbing noises from beepers, cell phones, palm pilots, laptop computers, games, etc.); (4) class attendance and punctuality requirements are contracted between the faculty and the students, through specific expectations for attendance and punctuality and specific consequences that are outlined by individual faculty members in the printed syllabus for each course. Students are expected to attend classes regularly and on time and are responsible for giving explanations/rationale for absences and lateness directly to the faculty member for each course in which they are enrolled. In cases where student absences are the result of emergency circumstances (e.g., death in the family, a student’s serious injury, or incapacitating illness) the student remains responsible for verifying the emergency circumstances to faculty. The organization of the Student Discipline Committee changed in the revised rules to omit the requirement that the chairperson of the committee must be a faculty member. The provisions of the rule regarding the appeal of disciplinary action cases for students in a Health Sciences Program is revised to omit the students’ right to appeal to the President of the college. The revised rule provides that the speed limit on campus is reduced from 20 miles per hour to 15 miles per hour.

Various non-substantive and editorial revisions are included in the rules to reflect changes to names of institutional offices, departments, and to the titles of administrators.

DYERSBURG STATE COMMUNITY COLLEGE

Student Disciplinary Rules

No changes.

JACKSON STATE COMMUNITY COLLEGE

Student Disciplinary Rules

The Disciplinary Sanctions section of the rule is revised to include the new sanction of mandatory enrollment in a counseling / rehabilitative treatment center, regular counseling sessions with a Jackson State or independent counselor or mandatory participation in, and satisfactory completion of, a drug or alcohol abuse program or rehabilitation program

The Disciplinary Procedures of the College are amended to explain that the students have a right to choose that a disciplinary charge against them be presented to the Vice President for Academic and Student Services (i.e., single decision maker) or heard before the Student Disciplinary Committee (i.e., a full hearing with a decision making body) should students choose not to choose the option to request a hearing pursuant to the contested case provisions of the Tennessee Uniform Administrative Procedures Act (TUAPA) in certain categories of cases. If the students elect either of the institutional methods for the disposition of the disciplinary charge(s) against them, they have the right to appeal to the President of the College. The Disciplinary Procedures are further amended to include an extensive section including the misuse of computers as a violation of institutional rules. The new provisions of the rule regarding computer misuse parallel TBR Policy 1:08:00:00, "Information Technology Resources."

The Traffic and Parking Regulations are revised to authorize the college's assessment of a \$10.00 campus access fee for all students each academic year. The revisions also indicate that parking decals are valid for a full year (September 1 – August 31) and that all individuals who plan to park vehicles on campus must purchase a parking decal during the first week of registration or during the individual's first week of enrollment and/or employment at the college.

MOTLOW STATE COMMUNITY COLLEGE

Student Disciplinary Rules

No changes.

NASHVILLE STATE TECHNICAL COMMUNITY COLLEGE

Student Disciplinary Rules

The sanction for the existing disciplinary offense of littering is revised to provide that offenders of the rule may be subject to a fifty dollar (\$50.00) fine or required to volunteer for two (2) hours of litter pick up on the campus.

The Traffic and Parking Regulations are amended to omit the following provisions: (1) the limitation of curb parking to fifteen (15) minutes and (2) the designation that the lack of an official parking permit or an expired vehicle registration constitutes a violation of the parking rules. The rules are further revised to authorize the annual assessment of a ten dollar (\$10.00) vehicle registration fee to receive an official parking decal (replacement parking decals cost \$10.00). Individuals applying for a temporary (two weeks in duration) disabled parking permit for access to spaces designated for handicapped access must include an official physician's note with their application.

NORTHEAST STATE TECHNICAL COMMUNITY COLLEGE

Student Disciplinary Rules

The Traffic and Parking Regulations are amended to provide that pedestrians always have the right of way on the campus (formerly restricted to crosswalks). The revisions remove the requirement that motorcycles must be parked only in areas designated for motorcycles. The amended rules require individuals applying for a disabled access parking decal to register with the Security Officer to obtain the decal. The parking regulations are revised to authorize twenty-four (24) hour enforcement of reserved parking spaces and those designated as twenty-four (24) hour staff & faculty parking (formerly twenty-four (24) enforcement was applicable only to spaces reserved for handicapped parking and in fire lanes). The revised rules authorize the imposition of a five dollar (\$5.00) increase in the fine for an individual's first violation of the traffic and parking regulations, such that the fee in the amended rule is ten dollars (\$10.00). The rules are further revised to specify that the proper display of an official parking hang tag is in a manner which enables the observer to be able to clearly read the year and number of the hang tag.

PELLISSIPPI STATE TECHNICAL COMMUNITY COLLEGE

Student Disciplinary Rules

The rule outlining Academic and Classroom Misconduct is amended to include the following conduct as forms of academic dishonesty: (a) purchasing or otherwise obtaining prewritten essays, research papers, or materials prepared by another person or agency that sells term papers or other academic materials to be presented as one's own work; (b) taking an exam for another student; and (c) providing others with information and/or answers regarding exams, quizzes, homework, or other classroom assignments unless explicitly authorized by the instructor. The rules are further revised to provide that any conduct constituting academic dishonesty that occurs within a web/ internet or distance-learning environment is prohibited. The rule is also amended to add the following new provisions: (1) upon discovery of a student's participation in academic misconduct, the student is immediately responsible to the instructor of the class, who will meet with the offending student with evidence of the misconduct; (2) Pellissippi State students accept full responsibility for the quality and authenticity of submitted course work. When confronted with evidence of academic misconduct, students may admit their participation and accept the penalty imposed by the instructor; and (3) the instructor will inform the department head of the violation, and the department head will forward written notice of the violation to the dean of Student Affairs, who will keep records of the incident. The procedures by which a student may appeal a case of academic misconduct should he / she believe that an erroneous accusation of violation has been made are revised to specify the following process: (a) the student may discuss the case with the department head for that discipline and (b) if the student seeks further appeal, he or she may ask the department head to contact the vice president of Academic and Student Affairs, who will determine any additional steps to be taken.

The Disciplinary Sanctions section of the rule is amended by adding that in cases involving second and/or third instances of academic misconduct, the student will be subject to further disciplinary action. Specifically, the revised rule provides that the dean of Student Affairs will notify the student, and a hearing shall be afforded the student according to the procedures outlined in the college catalog and handbook. Students found guilty of repeated academic misconduct may receive one of the following sanctions: (1) second offense: suspension for the semester with possible referral for additional sanctions and (2) third offense: expulsion from the college.

The Traffic and Parking Regulations are amended to include driving under the influence of alcohol or narcotics as a form of a moving violation. The regulations are further revised to include that failure to obey the instructions of security personnel will result in a fifteen (\$15.00) fine. The section of the regulations delineating the appeals of citations is revised to omit the provisions that the Appeals Committee will hear cases once a month at all campuses and that individuals receiving a citation must have the appeal heard at the campus where the citation was issued.

ROANE STATE COMMUNITY COLLEGE

Student Disciplinary Rules

The Disciplinary Offense Rule regarding Computer Misuse is amended to include the prohibition of personal or private for profit use of Roane State Community College Information Technology resources. Use of campus electronic mail by students, staff or faculty to post a resume or to contact a potential employer is not prohibited under this rule. The rule is further amended to require individuals to retain authorization from the Executive Director of Information Technology prior to using Roane State Community College computer resources. Administrative Systems computer accounts and job numbers may not be used by anyone other than the applicant(s) and for any purpose other than that agreed upon with the Director of Administrative Systems. The rule revision includes the prohibition of gambling on institutional computers. The rule include the definition of obscene material as defined in the Tennessee Code and it prohibits the viewing, accessing, and downloading of obscene materials on computers owned by the institution.

The Traffic and Parking Regulations are amended to include the following new provisions to the Registration of Vehicles section of the rule: (1) expired campus registration decals must be remove and current campus registration decals must be hung from the rear view mirror; (2) the person to whom the vehicle is registered is responsible for the vehicle and all violations and citations issued thereto; (3) each student who registers for classes will be assessed a campus access for each semester; (4) faculty and staff will be assessed an annual campus access fee of ten dollars (\$10.00) (persons who are employed spring semester or after will be assessed a campus fee of five dollars (\$5.00)); (5) in case of an emergency temporary permits (for no more than three (3) days) are available in the Office of the Dean of Student Services and Multicultural Affairs. Vehicle registration must be renewed at the beginning of each fall semester and will be valid until the beginning of the following fall semester so long as the registrant remains a student or a college employee. Illegally parked vehicles may be towed or impounded at the owner's expense as provided in the amended rules. The rules are further amended to provide that appeals of parking or traffic citations must be reported to the office of the Dean of Students and Multicultural Affairs within seventy-two (72) hours of issuance. Students who repeatedly violate the traffic and parking regulations or commit a single violation under extreme circumstances will be referred to the Dean of Student Services and Multicultural Affairs for disciplinary action which may lead to suspension or dismissal from the college.

There were several non-substantive, editorial revisions to rules.

SOUTHWEST TENNESSEE COMMUNITY COLLEGE

Student Disciplinary Rules

No changes.

VOLUNTEER STATE COMMUNITY COLLEGE

Student Disciplinary Rules

The Disciplinary Offenses section of the rules is amended by adding harassment as a new disciplinary offense in violation of the institutional rules. The offense, harassment, is defined as “[A]ny of harassment by an individual or group against a student, College employee or campus group. Harassment shall include but not be limited to: insults, heckling, verbal abuse, threats of physical abuse, unwanted suggestions of a sexual nature, repeated teasing or annoyance to another, repeated unsolicited phone calls made with the intent to harass or other actions intended to disturb others.”

The rule revisions include non-substantive and editorial revisions to reflect changes to the names of institutional departments and the titles of administrators.

WALTERS STATE COMMUNITY COLLEGE

Student Disciplinary Rules

The Traffic and Parking Regulations are amended to provide that any vehicle receiving multiple (formerly two) violations for failure to display a valid hang tag may be removed from the campus at the owner's expense. The motor vehicle registration section of the regulations is revised to outline the procedure to obtain a parking hang tag from the college. The rules further provide that the hang tags expire in August of each year and, therefore, individuals are not required to obtain a new permit at the beginning of each semester.

TENNESSEE TECHNOLOGY CENTERS

Student Disciplinary Rules

No changes.

The proposed rules set out herein were properly filed in the Department of State on the 11th day of August, 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 29th day of December, 2004. (08-19 through 08-43)

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PUBLIC NECESSITY RULES

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

- 0030 - Commission on Aging and Disability - Public necessity rules required by the General Assembly - Chapter 0030-1-6 Requirement to Verify Background Information for New Employees and Volunteers - 7 T.A.R. (July 2004) - Filed June 16, 2004; effective through November 28, 2004. (06-32)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public necessity rules implementing the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, Chapters 1200-13-1 General Rules - 5 T.A.R. (May 2004) - Filed April 28, 2004; effective through October 10, 2004. (04-20)
- 1240 - Department of Human Services - Family Assistance Division, Emergency rules regarding the standard of need for recipients of temporary assistance in the Families First program, chapter 1240-1-50 Standard of Need/Income, 9 T.A.R. (August 2004) - Filed July 1, 2004; effective through December 13, 2004. (07-01)
- 1340 - Department of Safety - Driver License Issuance - Public necessity rules regarding the issuance of driver licenses, Chapter 1340-1-13 Rules of Classified and Commercial Driver Licenses and Certificates for Driving, 7 T.A.R. (July 2004) - Filed June 30, 2004; effective through December 12, 2004. (06-48)
- 1360 - Department of State - Division of Business Services - Public necessity rules relating to Notaries Public, Chapter 1360-7-2 Notary Publics, 7 T.A.R. (July 2004) - Filed June 10, 2004; effective through November 22, 2004. (06-27)

TENNESSEE HIGHER EDUCATION COMMISSION - 1540

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Public Chapter 883, Acts of 2004 amended Tennessee Code Annotated, Section 8-50-114 relative to the waiver of tuition and fees for state employees. The public chapter went into effect on July 1, 2004 and the statute it amended requires the Tennessee Higher Education Commission to promulgate rules to effectuate the provisions of the acts. Public necessity rules are necessary to address the application of the public chapter at the various institutions for the 2004 Fall semester.

For a copy of this public necessity rule contact Rosie Padgett, Tennessee Higher Education Commission, Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243, telephone 615-741-3605.

Richard G. Rhoda, Executive Director

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

**1540-1-4
PUBLIC HIGHER EDUCATION FEE WAIVERS FOR STATE EMPLOYEES**

AMENDMENTS

Chapter 1540-1-4 is amended by deleting the current rules in their entirety and replaced with the following new rules. The text of the public necessity rules is as follows:

TABLE OF CONTENTS

1540-1-4-.01	Definitions	1540-1-4-.03	Limitations
1540-1-4-.02	Eligibility	1540-1-4-.04	Appeal Procedures

1540-1-4-.01 DEFINITIONS

- (1) Course: Undergraduate or graduate credit courses at a state supported college or university, to certificate or diploma credit courses at the technology centers, or any course offered by the TFLI.
- (2) Full-time employee of the State of Tennessee or Employee: Employee of the executive, judicial or legislative branches of Tennessee state government scheduled to work one thousand nine hundred and fifty (1,950) hours or more per year.
- (3) Member of the General Assembly: Individual currently holding office as a member of either the House of Representatives or Senate and elected pursuant to Article II of the Tennessee Constitution.
- (4) State supported college or university or technology center or Institution: Any institution operated by the University of Tennessee or the Tennessee Board of Regents which offers courses of instruction beyond the high school level.
- (5) Tennessee Foreign Language Institute or TFLI: Foreign language institute established by Tennessee Code Annotated Title 49, Chapter 50, Part 13.
- (6) Term: The time frame in which a course is offered by the Institution, and for purposes of these rules includes Fall, Spring, Summer and special session terms, as defined by the individual universities and colleges. It is the intent of these rules that over the course of special session terms and the two Summer semester terms an employee or member of the General Assembly will be limited to no more than two courses, the instruction periods of which shall not overlap. For the technology centers and the TFLI, "term" refers to a three month reporting period. The four terms are:

July 1 - September 30 October 1 - December 31 January 1 - March 31 April 1 - June 30

- (7) Fees that are waived by this program are defined as follows:

- (a) Debt service fee: A fee charged to students for the retirement of indebtedness that may be included in the maintenance fee charges.
- (b) Maintenance fee: A fee charged to students enrolled in credit courses. It is an enrollment or registration fee and is calculated based on the number of student credit hours for which the student enrolls.
- (c) Registration fee: Maintenance fee as described above.
- (d) Student activity fee: A fee charged to students in addition to tuition and maintenance fees that is based on the credit hour enrollment of the student. Some institutions include the student activity fee in the maintenance fee rather than as a separate charge. The student activity fee supports health services, athletics, student newspapers and social and cultural events.
- (e) Tuition charge: A fee charged to students classified as non-residents in addition to the maintenance fee.

1540-1-4-.02 ELIGIBILITY

- (1) A full-time employee of the State of Tennessee or a member of the General Assembly shall be eligible to enroll in one course per term at any state supported college, university or technology center, or the Tennessee Foreign Language Institute without paying the tuition charge, maintenance fee, student activity fee, or registration fee.
- (2) Eligibility for the fee waiver shall be determined as of the respective Institutions' or TFLI's first day of classes for the term. To receive the fee waiver, the Employee or the member of the General Assembly must be eligible for enrollment at the Institution for which a fee waiver is sought according to the academic rules and regulations of the Institution or the TFLI. The employee must also have six months or more of continuous service as a full-time employee to receive the fee waiver. A change in employment status after the first day of classes will affect eligibility for the fee waiver only for subsequent terms.

1540-1-4-.03 LIMITATIONS

- (1) Fee waivers are limited to one course per term. Fees will not be waived for non-credit or correspondence courses. Employees are not eligible for fee waivers at more than one Institution per term. For the purposes of this paragraph, the term "Institution" shall include the TFLI.
- (2) Fees and charges which will not be waived include the cost of books or other course materials which are retained by the student, application fees, off-campus facilities fees, parking fees, traffic fines, and fees assessed that are applied to the cost of the course or which directly support the department offering the course such as applied music fees, lab fees, fees assessed to offset the cost of offering distance education courses or courses offered in a particular discipline.
- (3) Fees will not be waived for programs for which part-time or course by course enrollment is prohibited as determined by the Institutions. Examples include, but are not limited to, programs of law, medicine, dentistry, pharmacy, and veterinary medicine.
- (4) The fee waiver program described in this Chapter may not be used in conjunction with any other fee waiver or discount program.

- (5) At the time of enrollment, the Employee must have a completed state employee fee waiver form signed by his or her employer certifying that the applicant is a full-time employee with at least six months of continuous service. Forms are available at the higher education institutions or on the Commission's website, <www.state.tn.us/thec>.
- (6) Enrollment may be limited or denied by the college, university, technology center, or the TFLI on an individual basis according to space availability.
- (7) No tuition paying student shall be denied enrollment in a course because of state employee enrollments pursuant to this Act.
- (8) Rights and privileges provided to full-time employees of the state university and community college system and the University of Tennessee pursuant to T.C.A. § 49-7-116 shall not be affected or diminished by the Act.
- (9) The Higher Education Commission shall develop a methodology for allocating appropriations to reimburse Institutions and the TFLI for fees waived pursuant to this program.

1540-1-4-.04 APPEAL PROCEDURES

Appeals regarding the determination of eligibility of the applicant will be available in a manner consistent with institutional procedures now in place for admissions decisions.

Authority: T.C.A. §8-50-114

The public necessity rules set out herein were properly filed in the Department of State on the 31st day of August, 2004 and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 12th day of February, 2005. (08-79)

TENNESSEE HIGHER EDUCATION COMMISSION - 1540**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

Public Chapter 475, Acts of 2004 amended Tennessee Code Annotated, Section 49-7-119 relative to the fee discounts for children of licensed public school teachers and state employees. The public chapter went into effect on April 25, 2004 and the statute it amended requires the Tennessee Higher Education Commission to promulgate rules to effectuate the provisions of the acts. Public necessity rules are necessary to address the application of the public chapter at the various institutions for the 2004 Fall semester.

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

Richard G. Rhoda, Executive Director

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

**CHAPTER 1540-1-5
PUBLIC HIGHER EDUCATION FEE DISCOUNTS FOR CHILDREN
OF LICENSED PUBLIC SCHOOL TEACHERS AND STATE EMPLOYEES**

AMENDMENTS

Chapter 1540-1-5 is amended by deleting the current rules in their entirety and replaced with the following new rules. The text of the public necessity rules is as follows:

TABLE OF CONTENTS

1540-1-5-.01	Definitions	1540-1-5-.03	Limitations
1540-1-5-.02	Eligibility	1540-1-5-.04	Appeal Procedures

1540-1-5-.01 DEFINITIONS

- (1) Children under the age of twenty-four (24): Dependent children, twenty-three (23) years of age or younger, of certified public school teachers or employees of the State of Tennessee who are:
 - (a) The natural children or legally adopted children of the teacher or state employee.
 - (b) The stepchildren of the teacher or state employee living with the teacher or state employee in a parent/children relationship.
 - (c) Otherwise eligible and living in a parent/children relationship with the teacher or state employee, such as children of deceased parents who are being raised by a grandparent who is

employed as a teacher or state employee.

- (d) Children, as described in (a) through (c) above, of a teacher who died while employed as a public school teacher, and who are utilizing the benefit at the time of the parent/teacher's death.
- (2) Certified teacher in any public school in Tennessee or Teacher: Teacher, supervisor, principal, superintendent and other personnel who is licensed by the Tennessee Department of Education or by a branch of the U.S. Armed Forces to teach Reserve Officer Training Corps, and employed by any local board of education, for service in public, elementary and secondary schools in Tennessee supported in whole or in part by state funds.
- (3) Deceased state employee: Person who at the time of their death was a full-time employee of the State of Tennessee.
- (4) Full-time teacher or Teacher: School employee whose position requires them to be on the job on school days throughout the school year at least the number of hours during which schools in the local board of education are in session.
- (5) Full-time supervisors principal, superintendent and other personnel: School employee who is licensed by the Tennessee Department of Education whose current assignments, regardless of their classification, requires his or her services each working day at least a number of hours equal to a regular working day.
- (6) Full-time employee of the State of Tennessee: Employee of the executive, judicial, or legislative branches of Tennessee state government scheduled to work one thousand nine hundred and fifty (1,950) hours or more per year.
- (7) Maintenance fee: A fee charged to students enrolled in credit courses. It is an enrollment or registration fee and is calculated based on the number of student credit hours for which the student enrolls. Alternatively, at technology centers this term refers to program fees. Tuition does not include application for admission fees, student activity fees, debt service fees, lab fees, applied music fees, the cost of books or other course materials, dormitory charges, or meal plans.
- (8) Retired state employee: Employee of the State of Tennessee who retires after a minimum of twenty-five (25) years of full-time creditable service, although he or she may be deceased at the time the children seeks the benefit provided by this chapter.
- (9) State operated institution of higher learning or Institution: Any institution operated by the University of Tennessee or the Tennessee Board of Regents which offers courses of instruction beyond the high school level.

1540-1-5-.02 ELIGIBILITY

- (1) The successful applicant for a student fee discount must meet all of the following:
 - (a) Be twenty-three (23) years of age or under;
 - (b) Be a child of a teacher or state employee or deceased state employee in Tennessee as defined in this chapter;
 - (c) Be eligible according to the regulations in this chapter; and

- (d) Be eligible for enrollment at the institution for which a student fee discount is sought according to the academic rules and regulations of the institution.
- (2) Eligible children may enroll in any number of courses up to and including full-time study.
- (3) Fee discounts are only available for courses classified as undergraduate as defined by the institutions.
- (4) Eligibility for the discount will be based on the employment status of the teacher or state employee and the age of the child on the first day of classes for the term as determined by the institution. A change in employment status or the child's age after the first day of classes will affect eligibility for the discount only for subsequent terms.
- (5) At the time of enrollment, the student must present a completed form for children of teachers or state employees certifying eligibility to receive a tuition discount. This form must be signed by the teacher or state employee, his or her employer, and the student. Forms are available at the public higher education institutions or at the Commission's website <www.state.tn.us/thec>. Children of retired state employees must have this form signed by a designated official of the State Treasury Department, Division of Retirement to verify that the identified state employee has retired with a minimum of twenty-five (25) years of creditable service. For children of state employees killed on the job or in the line of duty, the form must be signed by a designated official of the state agency at which the employee was last employed.

1540-1-5-.03 LIMITATIONS

- (1) Fee discounts will not be retroactive for prior terms. Fee discounts are available only by application and should be approved prior to the beginning of the term for which a discount is being sought.
- (2) The fee discount described by this chapter may not be used in conjunction with any other fee waiver or discount program. No eligible child shall receive a discount greater than twenty-five percent (25%) for any one term under the provisions of the programs described by this chapter.
- (3) The Higher Education Commission shall develop a methodology for allocating appropriations to reimburse institutions for actual fee discounts provided pursuant to this program.

1540-1-5-.04 APPEAL PROCEDURES.

Appeals regarding the determination of eligibility of the applicant will be available in a manner consistent with institutional procedures now in place for admissions decisions.

Authority: T.C.A. §§8-50-115 and 49-7-119.

The public necessity rules set out herein were properly filed in the Department of State on the 31st day of August, 2004 and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 12th day of February, 2005. (08-81)

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RULEMAKING HEARINGS

TENNESSEE COMMISSION ON AGING AND DISABILITY - 0030

The Tennessee Commission on Aging and Disability will hold a public hearing to receive comments concerning proposed rules for cost sharing for services for the elderly provided through Title III of the Older Americans Act. The Commission will also receive comments on amended rules regarding cost sharing and participant contribution requirements for state funded Home and Community Based Services Program for Elderly and Disabled Adults. This hearing will be conducted as prescribed by Uniform Administrative Procedures Act T.C.A. §4-5-201 et. seq., and will take place at the Donelson-Hermitage Senior Center, 108 Donelson Pike, Donelson, Tennessee at 1:30 p.m. CST on Friday, October 22, 2004.

Written comments will be considered if received by close of business October 22, 2004, at the office of the Tennessee Commission on Aging and Disability, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860. Written comments may be transmitted in person, by U.S. Postal Service, a commercial courier, e-mail or facsimile. Any form of written comment must be identifiable by the sender's name and address, including zip code. Facsimile submissions will be accepted at 615-741-3309. Electronic mail submissions can be made to tnaging.tnaging@state.tn.us.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Commission on Aging and Disability to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, facsimile, e-mail or other means, and should be made no less than one week prior to October 22, 2004 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Commission on Aging and Disability, ADA Coordinator, Andrew Jackson State Office Building, Suite 825, 500 Deaderick Street, Nashville, TN 37243-0860, 615-741-2056. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298) or call the Commission on Aging and Disability TDD number, 615-532-3893.

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 0030-2-1

STATE-FUNDED HOME AND COMMUNITY BASED SERVICES FOR ELDERLY AND DISABLED ADULTS

Paragraph (4) subsection (h) of rule 0030-2-1-.02 Cost Sharing and Participant Contributions Requirements is amended by deleting the first sentence, so as amended the paragraph shall read:

- (h) If a consumer is unable to comply with the cost share policy, the area agency may adjust the cost share responsibility for that individual. This policy will be implemented on a case by case basis.

Authority: T.C.A. §§4-5-201, et seq., 71-2-105(b)(1), 71-5-1408, and 71-5-1707(i).

**CHAPTER 0030-1-7
COST SHARING FOR SERVICES FOR THE ELDERLY PROVIDED THROUGH
TITLE III OF THE OLDER AMERICANS ACT**

NEW RULES

TABLE OF CONTENTS

0030-1-7-.01	Purpose	0030-1-7-.03	Cost Sharing and Participant Contribution Requirement
0030-1-7-.02	Services Exempt from Cost Sharing	0030-1-7-.04	Waiver

0030-1-7-.01 PURPOSE

The purpose of this rule is to establish cost sharing requirements for services funded by the Older Americans Act as authorized by 42 U.S.C. 3030c-2.

0030-1-7-.02 SERVICES EXEMPT FROM COST SHARING

- (1) The following services are exempt from cost sharing:
- (a) Information and referral, outreach, benefits counseling, or case management services.
 - (b) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services.
 - (c) Congregate and home delivered meals.

0030-1-7-.03 COST SHARING AND PARTICIPANT CONTRIBUTION REQUIREMENTS

- (1) Each Area Agency on Aging and Disability shall adhere to these cost sharing requirements for recipients of services funded in whole or in part through the Older Americans Act funded through the Commission on Aging and Disability who can pay all or a portion of the cost of the services rendered.
- (2) Each Area Agency on Aging and Disability shall utilize a sliding fee scale to determine the amount a consumer of service will be asked to pay toward the cost of services he receives.
- (3) Except as otherwise provided, the cost sharing policies developed by the Commission shall utilize the following sliding fee scale:
- (a) Consumers with income less than 200% of the Federal Benefit Rate shall not be subject to cost sharing for services they receive.

- (b) Consumers with income at or above 200% of the Federal Benefit Rate shall be asked to pay a percentage of the cost of the services they receive, but the cost share shall not exceed 45% of their income.
 - (c) Recipients with incomes greater than 600% of the Federal Benefit Rate may receive information and assistance and other services exempted from cost share listed in 0030-1-7-.02, but shall be asked to contribute 100% of the cost of any additional services they receive.
- (4) These cost sharing policies shall ensure that each Area Agency on Aging and Disability will:
- (a) Provide applicants of service with a written description of the cost sharing guidelines prior to the commencement of any services;
 - (b) Determine the cost share amount based solely on the self-declaration of income with no consideration of assets;
 - (c) Collect consumer's cost share obligations utilizing an invoice format at least quarterly;
 - (d) Issue a receipt of payment to any consumer of service making a payment pursuant to these policies;
 - (e) Safeguard all funds collected through the cost sharing process including a record of accounts receivable for each consumer;
 - (f) Use methods for receiving cost share payments and contributions that protect the privacy of each consumer with respect to the amount contributed.
 - (g) Make a good faith effort to collect cost sharing obligations from consumers of service where feasible and cost effective. If the Area Agency on Aging and Disability finds that collecting a given amount is not cost effective, the Area Agency may waive this amount;
 - (h) Not deny any service for which funds are received under the Act for an older individual due to income or failure to make a cost share payment;
 - (i) Ensure that consumers of service who are not subject to cost sharing be given an opportunity to make a voluntary contribution toward the cost of service being provided.
- (5) All income collected in accordance with these rules shall be utilized by Area Agencies on Aging and Disability to expand the service for which such payment was given.

0030-1-7-.04 WAIVER

- (1) An Area Agency may request a waiver to the Commission's cost sharing policies, and the agency will approve such a waiver, if the area agency can adequately demonstrate that—
 - (a) Significant proportion of persons receiving services under the Act subject to cost sharing in the planning and service area have incomes below the poverty level ; or
 - (b) Cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging and disability.

Authority: 42 USCA 3030 (c)(2), et. seq., T.C.A. 71-2-105 (b)(i)

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2004. (08-88)

BOARD OF CHIROPRACTIC EXAMINERS - 0260

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-1-107, 63-1-108, 63-1-201, 63-4-103, 63-4-105, 63-4-106, 63-4-107, 63-4-112, 63-4-114, 63-4-115, 63-4-119, 63-4-123, 63-6-701 through 707, and Public Chapter 579 of the Public Acts of 2004. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 19th day of October, 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, 1st Flr., Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247 1010, (615) 532 4397.

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0260-2-.19 Board Members, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (10), so that as amended, the new catchline and the new paragraph (10) shall read:

0260-2-.19 BOARD MEMBERS, OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND ADVISORY RULINGS.

- (10) Advisory Rulings - Any person who is affected by any matter within the jurisdiction of the Board and who holds a license issued pursuant to Chapter 4 of Title 63 of the Tennessee Code Annotated, may submit a written request for an advisory ruling subject to the limitations imposed by T.C.A. § 63-4-103 (4). The procedures for obtaining and issuance of advisory rulings are as follows:
 - (a) The licensee shall submit the request to the Board Administrative Office on the form contained in subparagraph (e) providing all the necessary information; and

- (b) The request, upon receipt, shall be referred to the Board’s administrative staff for research, review and submission of a proposed ruling to the Board for its consideration at the next meeting after the draft ruling has been approved by the Board’s consultant and advisory attorney; and
- (c) The Board shall review the proposed ruling and either make whatever revisions or substitutions it deems necessary for issuance or refer it back to the administrative staff for further research and drafting recommended by the Board; and
- (d) Upon adoption by the Board the ruling shall be transmitted to the requesting licensee. The ruling shall have only such affect as is set forth in T.C.A. § 63-4-103 (4).
- (e) Any request for an advisory ruling shall be made on the following form, a copy of which may be obtained from the Board’s Administrative Office:

Board of Chiropractic Examiners
Request for Advisory Ruling

Date: _____

Licensee’s Name: _____

Licensee’s Address: _____

_____ Zip Code:

License Number: _____

1. The specific question or issue for which the ruling is requested:

2. The facts that gave rise to the specific question or issue:

3. The specific statutes and/or rules which are applicable to the question or issue:

Licensee’s Signature

Mail or Deliver to: Administrator
 Tennessee Board of Chiropractic Examiners
 First Floor, Cordell Hull Building
 425 Fifth Avenue North
 Nashville, Tennessee 37247-1010

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

Rule 0260-3-.06 Fees, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (c) in its entirety and renumbering the remaining subparagraphs accordingly, so that as amended, the new subparagraph (1) (a) shall read:

(1) (a) Application	\$130.00
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Authority: T.C.A. §§4-5-202, 4-5-204, 63-4-106, and 63-4-119.

Rule 0260-3-.12 Continuing Education, is amended by deleting subparagraph (8) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (d) shall read:

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

Authority: T.C.A. §§4-5-202, 4-5-204, 63-4-103, 63-4-106, 63-4-112, 63-4-114, 63-4-115, and 63-4-119.

Rule 0260-5-.06 Fees, is amended by deleting subparagraph (1) (b) in its entirety and renumbering the remaining subparagraphs accordingly, and is further amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

(4) Fee Schedule	Amount
(a) Application	\$ 200.00
(b) Late Fee	\$ 100.00
(c) Renewal	\$ 125.00
(d) Reciprocity	\$ 150.00
(e) Replacement Certificate	\$ 75.00
(f) State Regulatory (biennial)	\$ 10.00

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-1-107, 63-1-108, 63-1-112, 63-4-103, 63-4-105, 63-4-106, and 63-4-123.

Rule 0260-5-.12 Continuing Education, is amended by deleting subparagraph (8) (d) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (8) (d) shall read:

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

Authority: T.C.A. §§4-5-202, 4-5-204, 63-4-103, 63-4-106, 63-4-112, 63-4-114, 63-4-115, and 63-4-123.

NEW RULE

TABLE OF CONTENTS

0260-2-.25 Free Health Clinic and Volunteer Practice Requirements

0260-2-.25 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201.
- (a) Any chiropractor licensed to practice in this state or any other state who has not been disciplined by any licensure board may have his/her license converted to or receive a Tennessee “Special Volunteer License,” as defined in T.C.A. § 63-1-201, which will entitle the licensee to practice without remuneration solely within a “free health clinic,” as defined by T.C.A. § 63-1-201, at a specified site or setting by doing the following:
1. Obtaining from the Board’s administrative office a “Special Volunteer License” application, completing it and submitting it along with any required documentation to the Board’s administrative office; and
 2. Have the licensing authority of every state in which the chiropractor holds or ever held a license to practice submit directly to the Board’s administrative office the equivalent of a “certificate of fitness” as described in T.C.A. § 63-1-118 which shows that the license has never been subjected to any disciplinary action and is free and clear of all encumbrances; and
 3. For chiropractors who have not been licensed in Tennessee, comply with all provisions of subparagraphs (2) (d), (2) (e), and (2) (f) of rule 0260-2-.05 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 4. Submitting the specific location of the site or setting of the free health clinic in which the licensee intends to practice along with proof of the clinic’s private, and not-for-profit status.
- (b) A chiropractor holding a Special Volunteer License is not required to pay any fee for its issuance or the required biennial renewal pursuant to the Division of Health Related Board’s biennial birthdate renewal system.
- (c) A chiropractor holding a Special Volunteer License may not do any of the following:
1. Practice anywhere other than in the free health clinic site or setting specified in the application; and

2. Charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal benefit programs for the provision of medical or any other services; and
 3. Practice for any free health clinic that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.
- (d) Special Volunteer Licenses are subject to all of the following
1. All rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-2-.09 and .11, except those requiring the payment of any fees; and
 2. The rules governing continuing education as provided by rule 0880-2-.12; and
 3. Disciplinary action for the same causes and pursuant to the same procedures as all other licenses issued by the Board.
- (2) Practice Pursuant to the “Volunteer Health Care Services Act” T.C.A. §§ 63-6-701, et seq.
- (a) Any chiropractor licensed in this or any other state, territory, district or possession of the United States whose license is not under a disciplinary order of suspension or revocation may practice in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (b) Any person who may lawfully practice in this or any other state, territory, district or possession of the United States under an exemption from licensure and who is not under a disciplinary order of suspension or revocation and who is not and will not “regularly practice,” as defined by T.C.A. § 63-6-703 (3) may practice in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (c) A chiropractor or anyone who practices under an exemption from licensure pursuant to this rule may not charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal benefit programs for the provision of medical or any other services; and may not practice for any organization that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.
 - (d) Any organization that organizes or arranges for the voluntary provision of health care services on residents of Tennessee may utilize persons described in subparagraphs (a) and (b) to practice only when it has complied with the provisions of T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
- (3) Application review and licensure decisions for these types of licensure or organization registration shall be governed by rule 0260-2-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-201, 63-6-701 through 707, 63-4-103, 63-4-106, 63-4-107, and Public Chapter 579 of the Public Acts of 2004.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of August, 2004. (08-53)

TENNESSEE COMMISSION ON FIRE FIGHTING PERSONNEL STANDARDS AND EDUCATION - 0360

There will be a hearing before the Tennessee Commission on Fire Fighting Personnel Standards and Education to consider the promulgation of rules pursuant to Tenn. Code Ann. § 4-24-107. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place at the Kingsport Fire Department located at 130 Island Street, Kingsport, Tennessee 37660, at nine thirty o'clock (9:30) AM, EST on the 28th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 0360-1-1 GENERAL

NEW RULES TABLE OF CONTENTS

0360-1-1-.03 Mission Statement

0360-1-1-.03 MISSION STATEMENT.

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

Authority: T.C.A.. §4-24-107.

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

NEW RULES

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0360-3-1-.16 Hazardous Materials Awareness	0360-3-1-.23 Fire Safety Compliance Officer I
0360-3-1-.17 Hazardous Materials Operations	0360-3-1-.24 Fire Safety Compliance Officer II
0360-3-1-.18 Airport Firefighter	0360-3-1-.25 Fire Apparatus Operator
0360-3-1-.19 Wildland Firefighter I	0360-3-1-.26 Pumper Driver/Operator
0360-3-1-.20 Wildland Firefighter II	0360-3-1-.27 Aerial Apparatus Driver/Operator
0360-3-1-.21 Fire and Life Safety Educator I	0360-3-1-.28 Safety Officer
0360-3-1-.22 Fire and Life Safety Educator II	

0360-3-1-.16 HAZARDOUS MATERIALS AWARENESS.

- (1) A candidate for Hazardous Materials Awareness certification must successfully complete all of the requirements of Recruit Firefighter and prescribed in these rules and regulations and by Commission policy.
- (2) A candidate for Hazardous Materials Awareness certification must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.17 HAZARDOUS MATERIALS OPERATIONS.

- (1) A candidate for Hazardous Materials Operations certification must successfully complete all of the requirements of Fire Fighter I and Hazardous Materials Awareness as prescribed in these rules and regulations and by Commission policy.
- (2) A candidate for Hazardous Materials Operations certification must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.18 AIRPORT FIREFIGHTER.

- (1) An Airport Firefighter must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.
- (2) An Airport Firefighter must successfully pass and examination(s) as promulgated by the Commission.

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

0360-3-1-.19 WILDLAND FIREFIGHTER I.

- (1) A Wildland Firefighter I must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.

- (2) A Wildland Firefighter I must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.20 WILDLAND FIREFIGHTER II.

- (1) A Wildland Firefighter II must successfully complete all of the requirements for Wildland Firefighter I as prescribed in these rules and regulations and by Commission policy.
- (2) A Wildland Firefighter II must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.21 FIRE AND LIFE SAFETY EDUCATOR I.

- (1) A Fire and Life Safety Educator I must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.22 FIRE AND LIFE SAFETY EDUCATOR II.

- (1) A Fire and Life Safety Educator II must successfully complete all of the requirements for Fire and Life Safety Educator I as prescribed in these rules and regulations and by Commission policy.
- (2) A Fire and Life Safety Educator II must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.23 FIRE SAFETY COMPLIANCE OFFICER I.

- (1) A Fire Safety Compliance Officer I must successfully complete all of the requirements for Fire Fighter II as prescribed in these rules and regulations or be certified in compliance with Tenn. Code Ann. § 68-120-113.
- (2) A Fire Safety Compliance Officer I must successfully pass an examination(s) as promulgated by the Commission.

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

0360-3-1-.24 FIRE SAFETY COMPLIANCE OFFICER II.

- (1) A Fire Safety Compliance Officer II must successfully complete all of the requirements for Fire Safety Compliance Officer I as prescribed in these rules and regulations and by Commission policy.

- (2) A Fire Safety Compliance Officer II must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.25 FIRE APPARATUS OPERATOR.

- (1) A Fire Apparatus Operator must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.
- (2) A Fire Apparatus Operator must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.26 PUMPER DRIVER/OPERATOR.

- (1) A Pumper Driver/Operator must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.
- (2) A Pumper Driver/Operator must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.27 AERIAL APPARATUS DRIVER/OPERATOR.

- (1) An Aerial Apparatus Driver/Operator must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.
- (2) An Aerial Apparatus Driver/Operator must successfully pass the examination(s) as promulgated by the Commission.

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

0360-3-1-.28 SAFETY OFFICER.

- (1) A Safety Officer must successfully complete all of the requirements for Fire Officer I as prescribed in these rules and regulations and by Commission policy.
- (2) A Safety Officer must successfully pass the examination(s) as promulgated by the Commission.

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

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

NEW RULES

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0360-6-1-.03 Domestic Violence Training

0360-6-1-.05 Reciprocity

0360-6-1-.04 Progression

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

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

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

0360-6-1-.04 PROGRESSION.

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

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

0360-6-1-.05 RECIPROCITY.

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

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

**CHAPTER 0360-1-2
DEFINITIONS**

AMENDMENTS

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

0360-1-2-.01 DEFINITIONS.

- (1) "Commission" shall mean the Tennessee Commission on Fire Fighting Personnel Standards and Education.
- (2) "Department" shall mean the agency that provides fire protection service to a district and agrees to abide by standards adopted by the Commission.

- (3) Journeyman Fire Fighter shall be equivalent to Fire Fighter II.
- (4) "TC" shall mean the Training Committee composed of equal representation from the Department officers and employees.
- (5) "Trainee" shall mean a member of a department who is engaged in learning the craft of Journeyman Fire Fighter or Fire Fighter II.

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

CHAPTER 0360-2-2 INSTRUCTOR CERTIFICATION

AMENDMENTS

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

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

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

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

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

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

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

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

AMENDMENTS

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

0360-3-1-.01 RECRUIT FIREFIGHTER.

- (1) A Recruit Fire Fighter is an individual recruited by a participating fire department after the date such department enters into the Commission's programs.
- (2) A Recruit Fire Fighter shall serve a probationary period to demonstrate the willingness and ability to perform the duties demanded of a fire fighter at fires and other scenes of emergency, as well as the willingness and ability to perform the routine duties in the station and elsewhere as assigned. The length of the probationary period shall be determined by the local department.
- (3) A Recruit Fire Fighter shall serve at least twelve (12) months in this classification or complete two-hundred forty (240) hours of formal entry level training which has the prior approval of the Commission before qualifying to become a Fire Fighter I.

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

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

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

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

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

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

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

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

Paragraph (1) of rule 0360-3-1-.09 Fire Office I is amended by deleting the text of the paragraph and substituting instead the following language, so that, as amended, paragraph (1) of rule 0360-3-1-.09 the rule shall read:

- (1) A Fire Officer I must successfully complete all of the requirements of Journeyman Fire Fighter/Fire Fighter II and Fire Department Instructor I as prescribed in these rules and regulations, and by Commission policy.

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

**CHAPTER 0360-4-1
EXAMINATIONS****AMENDMENTS**

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

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

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

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

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

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

- (9) The examination for Fire Officer IV shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer IV as set forth in Chapter 0360-6-1.
- (10) The examination for Hazardous Materials Awareness shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Awareness as set forth in Chapter 0360-6-1.
- (11) The examination for Hazardous Materials Operations shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Operations as set forth in Chapter 0360-6-1.
- (12) The examination for Airport Firefighter shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Airport Firefighter as set forth in Chapter 0360-6-1.
- (13) The examination for Wildland Firefighter I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter I as set forth in Chapter 0360-6-1.
- (14) The examination for Wildland Firefighter II shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter II as set forth in Chapter 0360-6-1.
- (15) The examination for Fire and Life Educator I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire and Life Safety Educator I as set forth in Chapter 0360-6-1.
- (16) The examination for Fire and Life Educator II shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire and Life Safety Educator II as set forth in Chapter 0360-6-1.
- (17) The examination for Fire Safety Compliance Officer I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer I as set forth in Chapter 0360-6-1.
- (18) The examination for Fire Safety Compliance Officer II shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer II as set forth in Chapter 0360-6-1.
- (19) The examination for Fire Apparatus Operator shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Apparatus Operator as set forth in Chapter 0360-6-1.
- (20) The examination for Pumper Driver/Operator shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Pumper Driver/Operator as set forth in Chapter 0360-6-1.
- (21) The examination for Aerial Apparatus Driver/Operator shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Aerial Apparatus Driver/Operator as set forth in Chapter 0360-6-1.

- (22) The examination for Safety Officer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Safety Officer as set forth in Chapter 0360-6-1.

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

**CHAPTER 0360-5-1
REVOCATION OF CERTIFICATION
AMENDMENTS**

Rule 0360-5-1-.02 Separation from Active Fire Service is amended by deleting the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read:

0360-5-1-.02 SEPARATION FROM ACTIVE FIRE SERVICE.

An individual's certification will automatically terminate upon the expiration of three (3) years after such person ceases to be an active member of a fire department. It will be the responsibility of each individual fire department to notify the Commission of any fire service personnel leaving the fire department due to separation, termination, retirement, deceased, etc.

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

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

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

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

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

472	Professional Competences of Responders to Hazardous Materials Incidents
1001	Fire Fighter Professional Qualifications
1002	Fire Apparatus Driver/Operator Professional Qualifications
1003	Professional Qualifications for Airport Fire Fighters
1006	Rescue Technician Professional Qualifications
1021	Fire Officer Professional Qualifications
1031	Professional Qualifications for Fire Inspector
1033	Professional Qualifications for Fire Investigator

1035	Professional Qualifications for Public Fire and Life Safety Educator
1041	Fire Service Instructor Professional Qualifications
1051	Wildland Firefighter Professional Qualifications
1521	Fire Department Safety Officer

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

CHAPTER 0360-7-1 SALARY SUPPLEMENT

AMENDMENTS

The title of Chapter 0360-7-1 Salary Supplement is amended by deleting the language “Salary Supplement” and substituting instead the language “Educational Incentive Pay”.

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

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

- (h) have passed a physical examination by a licensed physician which, at minimum, meets the requirements of Section E of Occupational Health and Safety Administration (“OSHA”) regulation 1910.134; and

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

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

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

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

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

- 2. Four (4) hours of one (1) or more of the following subjects:
 - (i) Firefighter safety
 - (ii) Stress management

- (iii) Domestic violence training
- (iv) Sudden Infant Death Syndrome (“SIDS”) training; and

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

Part 3 of subparagraph (b) of paragraph (4) of rule 0360-7-1-.05 Requirements for In-Service Training Programs is amended by deleting the text of the part in its entirety, and by substituting the following language, so that, as amended, part 3 of subparagraph (b) of paragraph (4) of rule 0360-7-1-.05 shall read:

3. The Commission also requires that eligible fire fighters be currently trained and demonstrate proficiency in the skills of CPR by an agency recognized by the Commission. A maximum of four (4) hours credit toward the required forty (40) hours in-service training shall be allowed for this training.

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

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

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

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

REPEALS

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

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

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

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

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

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

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

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

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

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

The notice of rulemaking set out herein was properly files in the Department of State on the 31st day of August, 2004. (08-77)

DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF FIRE PREVENTION

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of amendments to rules pursuant to Tenn. Code Ann. § 68-102-113. 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 640 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. (Central Time) on Monday, October 18, 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 Stuart Crine, Director, Electrical Section, Division of Fire Prevention, 500 James Robertson Parkway, 3rd Floor, Nashville, Tennessee 37243 at (615) 741-7170.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-2-1
ELECTRICAL INSTALLATIONS

NEW RULES

TABLE OF CONTENTS

0780-2-1-.20 Local Government Authorization to Perform Electrical Inspections

0780-2-1-.20 LOCAL GOVERNMENT AUTHORIZATION TO PERFORM ELECTRICAL INSPECTIONS.

- (1) Purpose. Pursuant to Tenn. Code Ann. § 68-102-143(b)(1), the state fire marshal may authorize a local government to conduct electrical inspections through the local government's appointed deputy inspectors. Deputy inspectors appointed in such a manner are authorized to inspect electrical installations upon receipt of a request from the owner of the property or from any person, association or corporation supplying electrical energy to the installations, or from municipal governing bodies, or from the county legislative body of the county in which the installations are located and the inspectors for their compensation are authorized to charge for and received a fee for each inspection. This rule sets forth the criteria by which local governments may seek authorization to perform electrical inspections and procedures by which the state fire marshal may review such authorization.
- (2) Initial Authorization.
 - (a) Prior to being authorized to perform electrical inspections, the local government, through the county executive, the county commission, the mayor or the city council, shall make a written request to the state fire marshal.
 - (b) The request shall be completed on a form approved by the state fire marshal and shall contain the following information:

- (i) The title(s) and edition(s) of the code(s) that will be adopted and enforced;
 - (ii) The number and types of inspections of each installation (final, rough-in, temporary, HVAC, service release, re-inspect) that will be conducted;
 - (iii) A detailed description of the permit issuance and record-keeping process for all inspection activities;
 - (iv) The names of all persons who are employed by the local government to perform electrical inspections and who have successfully completed the 1 & 2 Family, and Electrical General or Electrical Commercial certification examinations prior to performing electrical inspections.
- (c) After receipt of the information required in paragraph (2)(b) of this rule, the state fire marshal will schedule a pre-authorization review to take place at the applying local government's office. During this review, the state fire marshal may review any and all records related to the local government's proposed electrical inspection program, including the certification records of persons employed to perform electrical inspections.
- (d) If after consideration of the information required in paragraph (2)(b) of this rule and after the pre-authorization review the state fire marshal determines that the local government can adequately enforce electrical codes and conduct electrical inspections, the state fire marshal may authorize the local government to conduct electrical inspections.
- (3) The local government's adopted electrical code publication shall be current within seven (7) years of the date of the latest edition thereof, unless otherwise approved by the state fire marshal.
- (4) Review of Local Government Authorization.
- (a) For any local government that was authorized to conduct electrical inspections before January 1, 2005, the state fire marshal will conduct a review as soon as practicable of the local government's authorization to conduct electrical inspections to determine whether the local government is adequately enforcing the adopted electrical codes and is properly performing inspections.
 - (b) For any local government that is authorized to conduct electrical inspections on or after January 1, 2005, the state fire marshal will conduct a review of the local government's authorization to conduct electrical inspections to determine whether the local government is adequately enforcing the adopted electrical codes, is properly performing inspections and is otherwise in compliance with the information originally submitted to the state fire marshal for purposes of gaining authorization to perform electrical inspections. The review provided by this paragraph shall take place at least once every three (3) years.
 - (c) Each local government that is reviewed pursuant to this paragraph will be notified of the review in writing. When a local government is subject to the review provided by this paragraph, the local government shall submit the information required for initial authorization by paragraph (2)(b) of this rule on a form provided by the state fire marshal within thirty (30) days of its receipt of the form.
 - (d) As part of the review, the state fire marshal may also conduct an on-site visit to the local government to review the electrical permit and inspection process.

- (e) The state fire marshal may request any other documentation it deems necessary for the local government to evidence compliance with the requirements for initial authorization set forth in paragraph (2)(b) of this rule.
- (f) Report of Review.
 - (i) After conclusion of the review, the state fire marshal will notify the local government in writing whether there are any area(s) in which the local government is not adequately enforcing the adopted electrical codes or properly performing inspections.
 - (ii) If the local government is not adequately enforcing the adopted electrical codes or properly performing inspections, the notification will contain recommended corrective action, and the local government will be directed to submit a plan of corrective action to the state fire marshal within thirty (30) days after its receipt of the notification. The plan of corrective action shall be sufficiently detailed so as to ensure compliance with all requirements for initial authorization.
 - (iii) Within thirty (30) days after receipt of the local government's plan of corrective action, the state fire marshal shall either approve or disapprove the plan. If the plan is approved, the state fire marshal may conduct periodic follow-up reviews to ensure continued compliance with the plan. If the plan is not approved, the state fire marshal may remove the local government's authorization to conduct electrical inspections.

Authority: T.C.A.. §§68-102-113 and 68-102-143(b)(1).

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 31st day of August, 2004. (08-78)

DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF REGULATORY BOARDS

There will be a hearing before the Commissioner of Commerce and Insurance or her designee to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann. § 68-115-207. 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 640 on the 6th floor of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 2:00 p.m. (Central Time) on October 18, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or the date the party intends to review such 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 the entire text of this Notice of Rulemaking Hearing, contact Dan Kelly, Director of the Boxing and Racing Program, at 500 James Robertson Parkway, Davy Crockett Tower, 2nd Floor, Nashville, Tennessee 37243, telephone (615) 532-0443.

SUBSTANCE OF PROPOSED RULES**CHAPTER 0780-5-1
PROFESSIONAL BOXING****AMENDMENTS**

Paragraph (1) of rule 0780-5-1-.06 Ring is amended by deleting the text of paragraph (1) in its entirety and substituting the following language so that, as amended, paragraph (1) of rule 0780-5-1-.06 shall read:

- (1) The ring shall not be less than sixteen (16) nor more than twenty-four (24) feet square within the ropes. The floor of the ring shall extend not less than sixteen (16) inches nor more than two (2) feet beyond the ropes on all sides of the ring. Such floor shall be padded with a one (1) inch layer of Ensolite (or the equivalent) placed over a one (1) inch base of building board or other suitable material. The padding shall be covered with canvas, duck, or similar material tightly stretched and laced securely in place under the apron.

Authority: T.C.A.. §68-115-207.

Paragraph (4) of rule 0780-5-1-.13 Weigh-in is amended by deleting the text of paragraph (4) in its entirety and substituting the following language so that, as amended, paragraph (4) of rule 0780-5-1-.13 shall read:

- (4) All weigh-ins shall be under the supervision and control of the Director and/or his or her designee.

Authority: T.C.A.. §68-115-207.

Paragraph (1) of rule 0780-5-1-.16 Timekeeper is amended by deleting the text of paragraph (1) in its entirety and substituting the following language so that, as amended, paragraph (1) of rule 0780-5-1-.16 shall read:

- (1) At all bouts there shall be a licensed timekeeper who possesses a whistle and/or some other sound device and an accurate stopwatch. The timekeeper shall be seated outside the ring close to the sound device required by rule 0780-5-1-.07.

Authority: T.C.A.. §68-115-207.

Paragraph (1) of rule 0780-5-1-.21 No Contest is amended by deleting the text of paragraph (1) in its entirety and substituting the following language so that, as amended, paragraph (1) of rule 0780-5-1-.21 shall read:

- (1) If the stoppage of a bout is attributable to any cause other than legal blows (including injuries resulting therefrom), disqualification, or retirement, such bout:
 - (a) will be ruled a “no contest”, if the stoppage occurs before the end of the third (3rd) round; or
 - (b) will be decided by the totals on the scorecards, if the stoppage occurs after the start of the fourth (4th) round.

Authority: T.C.A.. §68-115-207.

Paragraph (1) of rule 0780-5-1-.25 Time Limitations is amended by deleting the text of paragraph (1) in its entirety and substituting the following language so that, as amended, paragraph (1) of rule 0780-5-1-.25 shall read:

- (1) No bout shall exceed twelve (12) rounds of not more than three (3) minutes each in length. There shall be a rest period of one (1) minute between consecutive rounds.

Authority: T.C.A.. §68-115-207.

Paragraph (2) of rule 0780-5-1-.25 Time Limitations is amended by deleting the text of paragraph (2) in its entirety and substituting the following language so that, as amended, paragraph (2) of rule 0780-5-1-.25 shall read:

- (2) The number of days which must elapse before a boxer who has competed anywhere in a bout may participate in another bout shall be as follows:

Length of Bout (In scheduled rounds)	Required Interval (in days)
(a) 4 or less	2
(b) 5 - 9	5
(c) 10 - 12	7

Authority: T.C.A.. §68-115-207.

Paragraph (5) of rule 0780-5-1-.26 Responsibilities of Promoter is amended by deleting the text of paragraph (5) in its entirety and substituting the following language so that, as amended, paragraph (5) of rule 0780-5-1-.26 shall read:

- (5) No person may arrange, promote, organize, or produce a professional boxing match without providing health insurance for each boxer to provide medical coverage for any injuries sustained in the match. The minimum liability coverage shall not be less than ten thousand dollars (\$10,000).

Authority: T.C.A.. §68-115-207.

Paragraph (1) of rule 0780-5-1-.28 Contracts is amended by deleting the text of paragraph (1) in its entirety and substituting the following language so that, as amended, paragraph (1) of rule 0780-5-1-.28 shall read:

- (1) Every contract for the services of a boxer in any bout in this State shall be in writing and:
 - (a) include a term incorporating by reference the statutes and rules governing professional boxing in Tennessee;
 - (b) contain no other terms in conflict with such statutes or rules; and
 - (c) be available for review by the Director at any reasonable time upon request.

Authority: T.C.A.. §68-115-207.

Paragraph (1) of rule 0780-5-1-.32 Foul Related Injuries is amended by deleting the text of paragraph (1) in its entirety and substituting the following language so that, as amended, paragraph (1) of rule 0780-5-1-.32 shall read:

- (1) If a boxer is injured by a foul (for which the referee does not disqualify his opponent), both boxers may be seated in their corners for a period not to exceed five (5) minutes. During such period:
 - (a) The boxers shall be neither attended nor talked to by their seconds; and
 - (b) The ringside physician shall examine the fouled boxer and, in his discretion, the other boxer.
- (2) Should the fouled boxer be unable to continue after the rest period, the bout shall be scored in accordance with rule 0780-5-1-.21.

Authority: T.C.A.. §68-115-207.

CHAPTER 0780-5-3 TOUGHMAN CONTESTS

REPEALS

Chapter 0780-5-3 Toughman Contests is repealed in its entirety.

Authority: 2004 Tenn. Pub. Acts ch. 930, Tenn. Code Ann. § 68-115-207.

The notice of rulemaking set out herein was properly filed in the Department of State on the 24th day of August, 2004. (08-71)

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

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations, and Title V Program pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 20th day of October, 2004. Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of their comments to be submitted to the hearing officer at the public hearing.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on Wednesday, October 20, 2004, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to October 20, 2004 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 21st Floor, 401 Church Street, Nashville TN 37243, (615) 532-0103. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Mr. Ron Culberson at (615) 532-0554. Copies of documents concerning this matter are available for review at the office of the Technical Secretary and at certain public depositories. For information about reviewing these documents, please contact Mr. Malcolm Butler, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0600.

SUBSTANCE OF PROPOSED CHANGE

CHAPTER 1200-3-26 ADMINISTRATIVE FEES SCHEDULE

AMENDMENT

Subparagraph (d) of paragraph (9) of rule 1200-3-26-.02 Construction And Annual Emission Fees is amended by striking the two citations to the period "July 1, 2003, through June 30, 2004," and inserting in their places "July 1, 2004, through June 30, 2005;" striking the value "\$2,500" in the third sentence and inserting in its place the value "\$3,500" and in the third sentence striking the two citations to the period "July 1, 2003, through June 30, 2004," and inserting in their places "July 1, 2004, through June 30, 2005;" so that, as amended, the subparagraph shall read:

- (d) The rate at which major source actual-based annual emission fees are assessed shall be \$30.00 per ton for the annual accounting period July 1, 2004, through June 30, 2005. The rate at which major source allowable-based annual emission fees are assessed shall be \$19.50 per ton for the annual accounting period July 1, 2004, through June 30, 2005. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than \$3,500 for the annual accounting period July 1, 2004, through June 30, 2005. An annual revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph 1200-3-26-.01(1)(c). These annual rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board.

Authority: T.C.A. §68-201-105 and, 4-5-202 et. seq.

This notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2004. (08-89)

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

There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, acting on behalf of the Tennessee Solid Waste Disposal Control Board, to consider the adoption and promulgation of rules and amendments to rules (revision "y") pursuant to the Tennessee Code Annotated Sections 68 212 106, 68 212 107, 68 212 108, 68 212 109, 68 212 110 and 68 212 114; the Tennessee Solid Waste Disposal Act, Tennessee Code Annotated, Section 68 211 101 et seq; the Tennessee Environmental Protection Fund Act, Tennessee Code Annotated, Section 68 203 101 et seq; the Used Oil Collection Act of 1993, Tennessee Code Annotated, Section 68 211 1001 et seq; and the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 5 101 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 5 204, and will take place in the 5th Floor Conference Room, L & C Tower, 401 Church Street, Nashville, Tennessee at 1:00 PM CDT on October, 20, 2004.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to October 20, 2004 (or the date such party intends to review such filings), to allow time to provide such aid or services. Contact the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

SUMMARY OF PROPOSED RULES

This rulemaking includes multiple and various additions, deletions, and modifications to Rule Chapter 1200-1-11 Hazardous Waste Management. Many of these changes are proposed in response to revisions and additions published in Federal Registers that the U. S. Environmental Protection Agency (EPA) made between July 1, 2003 and June 30, 2004 to the corresponding Federal Regulations. These amendments are intended to make the State's Regulations equivalent to their Federal counterparts. They include certain technical corrections, definitions, housekeeping changes, clarifications, reference changes, typos, and other corrections.

Modifications in the federal regulations include clarifying as to when used oil contaminated with PCBs is regulated under the hazardous waste used oil management standards; that mixtures of conditionally exempt small quantity generators (CESQG) waste and used oil are subject to the hazardous waste used oil management standards irrespective of how that mixture is to be recycled; and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Air emissions from certain activities covered by NESHAP are being exempted from the hazardous waste standards.

Departmental modifications include adding language to clarify how to obtain a certain chromium exclusion and an application review fee; removing outdated waste minimization language; clarifying that used oil fill lines visually separated from tanks must be labeled on both sides of the obstruction; making certain language identical with EPA's; and including similar inspection and record keeping requirements for 180 day storage for a small quantity generator that is currently required for 90 day storage of hazardous wastes for a generator.

OTHER INFORMATION

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

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

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

 8332

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

 8332

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

Cookeville Environmental

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

Chattanooga Environmental

 Suite 550- State Office Building
 540 McCallie

 Chattanooga, TN 37402-2013
 (423) 634-5745/ 1-888-891-

Knoxville Environmental

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

Johnson City Environmental

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

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

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

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

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

Clarksville-Montgomery

 350 Pageant Lane, Suite 501
 Clarksville, TN 37040-0005
 (931) 648-8826

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

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

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

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

The "DRAFT" rules may also be accessed for review using:
<http://www.state.tn.us/environment/swm/swmppo>

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

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

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

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Solid Waste Management; Tennessee Department of Environment and Conservation; Attention: Mr. Gerald Ingram; 5th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615 532 0850 or FAX 615 532 0886. However, such written comments must be received by the Division by 4:30 PM CST, November 3, 2004 in order to assure consideration. For further information, contact Mr. Gerald Ingram at the above address or telephone number.

The notice of rulemaking set out herein was properly filed in the Department of State on the 17th day of August, 2004.
(08-56)

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

There will be a hearing conducted by the Division of Superfund on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Yorkville Community Center, Yorkville City Park, Highway 77, Yorkville, Tennessee on October 26, 2004, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

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

<u>Site Number</u>	<u>Site Name</u>
Gibson County (27)	
27-506	F W Gable Site Yorkville, TN
27-516	P & W Electric Yorkville, TN

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 24th day of August, 2004. (08-63)

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400

There will be a hearing before the Division of Superfund staff representing the Commissioner of the Department of Environment and Conservation to hear comments from the public concerning new rules concerning the clean-up of sites used to manufacture methamphetamine pursuant to Chapter 855 of the Public Acts of 2004. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated Section 4-5-204. The hearings will take place at the following locations on the dates and times indicated below:

17th floor Conference Room B
L&C Tower, 401 Church Street
Nashville, Tennessee
10:00 a.m.
October 18, 2004

Written comments will be also considered if received at the Division of Superfund, 4th Floor Annex, 401 Church Street, Nashville, TN 37243-1538 by the close of business on October 18, 2004.

Individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than (10) days prior to the scheduled meeting date to allow time for the Department to reasonably provide such aid or service. Contact the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of the entire text of this notice of rulemaking hearing, contact the office of the Tennessee Division of Superfund at 615-532-0900 or at 1-800-251-3479. Complete text of the proposed Rules may also be found by visiting the Secretary of State's Web site at <http://state.tn.us/sos/pub/tar/index.htm> and clicking on the September 2004 edition of the Tennessee Administrative Register.

SUBSTANCE OF THE PROPOSED RULES OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION DIVISION OF SUPERFUND

CHAPTER 1200-1-19 STANDARDS FOR TESTING AND CLEANING QUARANTINED CLANDESTINE DRUG MANUFACTURING SITES

TABLE OF CONTENTS

1200-1-19-.01 Standards for Determining Living Space Safe for Human Use	1200-1-19-.02 Use of Qualified Professionals for Sampling and Cleanup
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1200-1-19-.01 STANDARDS FOR DETERMINING LIVING SPACE SAFE FOR HUMAN USE

- (1) Methamphetamine shall not exceed .1 microgram /100cm² on any hard surfaces.
- (2) Volatile Organic Compounds shall not exceed 1ppm in air as measured under normal inhabitable ventilation conditions.

- (3) If it is determined that lead or mercury were used in the lab process, the standard for cleanup of lead on any surface shall not exceed 40ug/ft², and mercury shall not exceed 50 nanograms/m³ for indoor air. Lead acetate and mercuric chloride are used in the Amalgam process that uses phenylpropanone (P2P). This process is not commonly used, but may occasionally be encountered.

1200-1-19-.02 USE OF QUALIFIED PROFESSIONALS FOR SAMPLING AND CLEANUP

- (1) Samples shall be collected and interpreted by a professional certified by the Commissioner as being able to perform the services of an industrial hygienist. Any person holding a certification from the American Board of Industrial Hygienists as a Certified Industrial Hygienist is deemed certified by this rule as being able to perform these services. Other persons who have the qualifications as industrial hygienists under TCA § 62-40-101 may make a written request to the Commissioner to be included on the list of persons or entities entitled to perform the services of industrial hygienists for the purposes of these rules.
- (2) Clean up of properties shall be performed by a professional or company certified by the Commissioner as being able to perform the services of cleaning up sites used to manufacture methamphetamines. Any person holding a certification from the American Board of Industrial Hygienist as a Certified Industrial Hygienist is deemed certified by this rule as being able to perform clean up services at these sites. Other persons may make a written request to the Commissioner seeking certification to perform these services.

Authority: (Not currently codified) Public Chapter 855 of the Public Acts of 2004

The notice of rulemaking set out herein was properly filed in the Department of State on the 24th day of August, 2004. (08-62)

DEPARTMENT OF HEALTH - 1200 BOARD OF ALCOHOL AND DRUG ABUSE COUNSELORS

There will be a hearing before the Tennessee Board of Alcohol and Drug Abuse Counselors to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 68-24-605. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 28th day of October, 2004.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-30-1-.01, Definitions, is amended by deleting paragraphs (15) and (16) in their entirety substituting instead the following language, so that as amended, the new paragraphs (15) and (16) shall read:

- (15) Licensure training supervision. On-going, direct clinical review for the purpose of training or teaching, by a qualified supervisor who supervises the performance of a person's interaction with a client and provides regular documented face-to-face consultation, guidance and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes and direct observation.
- (16) NAADAC. The Association for Addiction Professionals.

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

Rule 1200-30-1-.01, Definitions, is amended by deleting paragraph (3) in its entirety and renumbering the remaining paragraphs accordingly, and is further amended by adding the following language as a new, appropriately alphabetized and numbered paragraph:

- () Qualified Supervisor. A person who provides licensure training supervision for Alcohol and Drug Abuse Counselors. Such a person must be currently licensed in good standing as an Alcohol and Drug Abuse Counselor, have held said license for at least five (5) years and either have at least two (2) years experience supervising Alcohol and Drug Abuse Counselors or have completed at least thirty-six (36) contact hours of supervised supervisory work.

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

Rule 1200-30-1-.10, Supervision, is amended by deleting subparagraphs (2) (a) and (2) (b) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (6), so that as amended, the new subparagraphs (2) (a) and (2) (b), and the new paragraph (6) shall read:

- (2) (a) The supervisor has been a licensed alcohol and drug abuse counselor for at least five (5) years. The supervisor's license must be currently active, unencumbered, and unconditioned, and the supervisor must cease supervising if it becomes encumbered and/or conditioned; and
- (2) (b) The supervisor has two (2) years experience supervising alcohol and drug abuse counselors or has received at least thirty six (36) contact (clock) hours of supervision (by a qualified supervisor) of his supervisory work by supervision of at least one (1) person doing alcohol and drug abuse counseling.
- (6) Accountability – In all cases the specific terms of the supervisory arrangement are the responsibility of the qualified supervisor upon whom it is incumbent to assure appropriate supervisory time. Likewise, it is the responsibility of the applicant to obtain supervision. The education, training, experience, and ongoing performance of the applicant must be considered by the supervisor. The arrangements for supervision must be agreed to by both the qualified supervisor and the applicant. Ultimately, the qualified supervisor

of record must protect the welfare of the client and assure compliance with Tennessee law and professional ethics.

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

Rule 1200-30-1-.12, Continuing Education, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) The following organizations and entities are authorized to present, sponsor, or approve continuing education courses, events, and activities related to the practice of alcohol and drug abuse counseling:
 - (a) Nationally or regionally accredited institutions of higher education
 - (b) NAADAC (The Association for Addiction Professionals)
 - (c) TAADAC (The Tennessee Association of Alcohol and Drug Abuse Counselors)
 - (d) Tennessee Department of Health

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of August, 2004. (08-48)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

Rule 1200-8-1-.01, Definitions, is amended by deleting paragraphs (3), (27), (28), part (29)(a)6., paragraphs (44) and (58) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (27), (28), part (29)(a)6., paragraphs (44) and (58) shall read:

- (3) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (27) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (28) Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-1-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (29) (a) 6. An emergency department in accordance with rule 1200-8-1-.07(5) of these standards and regulations.
- (44) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.
- (58) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-1-.01, Definitions, is amended by deleting paragraph (35) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-1-.01, Definitions, is amended by deleting paragraph (18) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-1-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right

of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the patient directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-255, and 68-11-1702.

Rule 1200-8-1-.06, Basic Hospital Functions, is amended by adding the following language as new subparagraph (3)(c) and re-numbering the remaining subparagraphs appropriately, and is further amended by adding the following language as new subparagraph (3)(o), so that as amended, the new subparagraphs (3)(c) and (3)(o) shall read:

- (3) (c) The administrative staff shall ensure the hospital prepares, and has readily available on site, an Infection Control Risk Assessment for any renovation or construction within existing hospitals. Components of the Infection Control Risk Assessment may include, but are not limited to, identification of the area to be renovated or constructed, patient risk groups that will potentially be affected, precautions to be implemented, utility services subject to outages, risk of water damage, containment measures, work hours for project, management of traffic flow, housekeeping, barriers, debris removal, plans for air sampling during or following project, anticipated noise or vibration generated during project.
- (3) (o) The physical environment of the facility shall be maintained in a safe, clean and sanitary manner.
1. Any condition on the hospital site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.
 2. Cats, dogs or other animals shall not be allowed in any part of the hospital except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.
 3. A bed complete with mattress and pillow shall be provided. In addition, patient units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.
 4. Individual wash cloths, towels and bed linens must be provided for each patient. Linen shall not be interchanged from patient to patient until it has been properly laundered.
 5. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.
 6. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with patients shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between patients and as often as necessary to maintain them in a clean and sanitary condition. Single use, patient disposable items are acceptable but shall not be reused.

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

Rule 1200-8-1-.08, Building Standards, is amended by deleting paragraphs (3), (6), (9), subparagraph (10)(a), and paragraph (12) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (22), but not its subparagraphs, and substituting instead the following language, and is further amended by deleting paragraph (26) in its entirety, so that as amended, the new paragraphs (3), (6), (9), subparagraph (10)(a), paragraph (12), and paragraph (22), but not its subparagraphs, shall read:

- (3) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), National Electrical Code and the guidelines for Design and Construction of Hospital and Health Care Facilities as adopted by the Board for Licensing Health Care Facilities. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the American with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (6) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-1-.08(4) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (9) The codes in effect at the time of submittal of phased plans and specifications, as defined by these regulations shall be the codes to be used throughout the project.
- (10) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (12) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the institution. The distribution of such review may be modified at the discretion of the department.
- (22) An electronic surveillance system must be in use in all hospitals. In addition, the following alarms are required and shall be monitored twenty-four (24) hours per day:

Rule 1200-8-1-.08, Building Standards, is amended by deleting paragraph (23) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-1-.08, Building Standards, is amended by deleting paragraph (8) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-1-.08, Building Standards, is amended by adding the following language as new paragraph (3) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (3) shall read:

- (3) Construction and renovation projects shall provide for the safety and protection of patients and personnel.

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

Rule 1200-8-1-.09, Life Safety, is amended by deleting paragraph (3) in its entirety.

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

Rule 1200-8-1-.11, Records and Reports, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new paragraph (5) shall read:

- (5) Hospitals shall submit their Joint Annual Report data within one hundred and five (105) days after the end of each hospital's fiscal year and within one hundred and five (105) days after closure or a change in ownership. Hospitals shall also submit to the department, at the same time the hospital sends the signed paper copy of the report, a notarized statement from the hospital's financial auditor stating that the financial data reported on the Joint Annual Report is consistent with the audited financials for the hospital for that reporting year. The notarized statement shall also be attested to by an official of the submitting hospital.

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

Rule 1200-8-1-.12, Patient Rights, is amended by deleting subparagraphs (1)(d) and (1)(e) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(d) and (1)(e) shall read:

- (1) (d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (1) (e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The hospital must have policies to govern access and duplication of the patient's record;

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

Rule 1200-8-1-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-1-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each hospital shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the patient could have made while having capacity. The advance directive must be in writing and signed by the patient. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the patient's last incapacity and may include individual instructions. A witness

- shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.
 - (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
 - (5) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects a patient instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
 - (6) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the surrogate or health care decision-maker shall consider the patient's personal values to the extent known.
 - (7) An advance directive may include the individual's nomination of a court-appointed guardian.
 - (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.
 - (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
 - (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
 - (11) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
 - (12) A patient having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
 - (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
 - (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
 - (15) Surrogates.

- (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
- (b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:
 - 1. the patient has been determined by the designated physician to lack capacity, and
 - 2. no surrogate or guardian has been appointed, or
 - 3. the surrogate or guardian is not reasonably available.
- (c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.
- (d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the patient's spouse, unless legally separated;
 - 2. the patient's adult child;
 - 3. the patient's parent;
 - 4. the patient's adult sibling;
 - 5. any other adult relative of the patient; or
 - 6. any other adult who satisfies the requirements of 1200-8-1-.13(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
 - 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;
 - 2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;
 - 3. The proposed surrogate's demonstrated care and concern;
 - 4. The proposed surrogate's availability to visit the patient during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
 - (h) If none of the individuals eligible to act as a surrogate under 1200-8-1-.13(15)(c) thru 1200-8-1-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:
 1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
 - (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
 - (j) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.
 - (k) Except as provided in 1200-8-1-.13(15)(l):
 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and
 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order.

- (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.
- (18) Except as provided in 1200-8-1-.13(19) thru 1200-8-1-.13(21), a health care provider or institution providing care to a patient shall:
- (a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and
 - (b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-1-.13(19) thru 1200-8-1-.13(21) shall:
- (a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;
 - (b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.

- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
 - (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a patient in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
 - (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.

- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of August, 2004. (08-15)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-2 STANDARDS FOR PRESCRIBED CHILD CARE CENTERS

AMENDMENTS

Rule 1200-8-2-.01, Definitions, is amended by deleting paragraph (40) in its entirety and substituting instead the following language, and is further amended by adding the following language as twenty-three (23), new appropriately numbered paragraphs, so that as amended, the new paragraph (40) and the twenty-three (23), new, appropriately numbered paragraphs shall read:

- (40) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

- () Adult. An individual who has capacity and is at least 18 years of age.

- () Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

- () Health care decision. Consent, refusal of consent or withdrawal of consent to health care.

- () Health Care Decision-maker. In the case of an incompetent child, or a child who lacks decision-making capacity, the child's health care decision-maker is one of the following: the child's health care agent as

specified in an advance directive, the child's court-appointed legal guardian or conservator with health care decision-making authority, or the child's surrogate as determined pursuant to Rule 1200-8-2-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the child or other medical or surgical treatments to achieve the expressed goals of the informed child. In the case of the incompetent child, the child's representative expresses the goals of the child.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the patient directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the child's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a child's agent or guardian, authorized to make a health care decision for the child.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the child.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the child's physician which states that in the event the child suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 68-11-1702.

Rule 1200-8-2-.08, Life Safety, is amended by deleting paragraph (2) and re-numbering the remaining paragraphs appropriately.

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

Rule 1200-8-2-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-2-.12, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each prescribed child care center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a child who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual children. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the child could have made while having capacity. The advance directive must be in writing and signed by the parent. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the child's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the child by blood, marriage, or adoption and would not be entitled to any portion of the estate of the child upon the death of the child.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the child lacks capacity, and ceases to be effective upon a determination that the child has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a child lacks or has recovered capacity, or that another condition exists that affects a child instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the child's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the child's best interest. In determining the child's best interest, the surrogate or health care decision-maker shall consider the child's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the child's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.

- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A child having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A child having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a child who is an adult or emancipated minor if and only if:
 1. the child has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a child who lacks capacity, the child's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the child is receiving health care.
 - (d) The child's surrogate shall be an adult who has exhibited special care and concern for the child, who is familiar with the child's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:
 1. the patient's spouse, unless legally separated;
 2. the patient's adult child;
 3. the patient's parent;
 4. the patient's adult sibling;

5. any other adult relative of the patient; or
 6. any other adult who satisfies the requirements of 1200-8-2-.12(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the child shall be eligible to serve as the child's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the child or in accordance with the child's best interests;
 2. The proposed surrogate's regular contact with the child prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the child during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-2-.12(15)(c) thru 1200-8-2-.12(15)(g) is reasonably available, the designated physician may make health care decisions for the child after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the child's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the child may make all health care decisions for the child that the child could make on the child's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a child upon a decision of the surrogate only when the designated physician and a second independent physician certify in the child's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the child is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-2-.12(15)(l):

1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the child's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the child by blood, marriage, or adoption; and
 2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a child to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the child's individual instructions and may not revoke the child's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a child lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the child's current clinical record and communicate the determination to the child, if possible, and to any person then authorized to make health care decisions for the child.
- (18) Except as provided in 1200-8-2-.12(19) thru 1200-8-2-.12(21), a health care provider or institution providing care to a child shall:
- (a) comply with an individual instruction of the child and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the child; and
 - (b) comply with a health care decision for the child made by a person then authorized to make health care decisions for the child to the same extent as if the decision had been made by the child while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the child or to a person then authorized to make health care decisions for the child.

- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-2-.12(19) thru 1200-8-2-.12(21) shall:
 - (a) promptly so inform the child, if possible, and any person then authorized to make health care decisions for the child;
 - (b) provide continuing care to the child until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the child or person then authorized to make health care decisions for the child refuses assistance, immediately make all reasonable efforts to assist in the transfer of the child to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a child has the same rights as the child to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
 - (a) complying with a health care decision of a person apparently having authority to make a health care decision for a child, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a child in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.

(29) Do Not Resuscitate (DNR).

- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.
- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of August, 2004.
(08-12)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 19th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

Rule 1200-8-6-.01, Definitions, is amended by deleting paragraphs (2), (15), (16), (30), and (38) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (15), (16), (30), and (38) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (15) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (16) Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-6-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (30) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.

- (38) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-6-.01, Definitions, is amended by deleting paragraph (22) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-6-.01, Definitions, is amended by deleting paragraph (9) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-6-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the resident directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the resident's physician which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-6-.02, Licensing Procedures, is amended by deleting subparagraph (2)(a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2)(a) shall read:

- (2) (a) The applicant shall submit an application on a form provided by the department along with a copy of the Certificate of Need (CON) issued by the Tennessee Health Services and Development Agency (HSDA). Any condition placed on the CON will also be placed on the license.

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

Rule 1200-8-6-.06, Basic Services, is amended by adding the following language as new subparagraph (3)(b) and re-numbering the remaining subparagraphs appropriately, so that as amended, the new subparagraph (3)(b) shall read:

- (3) (b) The physical environment shall be maintained in such a manner to assure the safety and well being of the residents.
 1. Any condition on the nursing home site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.
 2. Cats, dogs or other animals shall not be allowed in any part of the facility except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

3. Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair residents.
4. Equipment and supplies for physical examination and emergency treatment of residents shall be available.
5. A bed complete with mattress and pillow shall be provided. In addition, resident units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.
6. Individual wash cloths, towels and bed linens must be provided for each resident. Linen shall not be interchanged from resident to resident until it has been properly laundered.
7. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.
8. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, resident disposable items are acceptable but shall not be reused.
9. The facility shall have written policies and procedures governing care of residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any resident area falls below 65° F. or exceeds 85° F., or is reasonably expected to do so, the facility shall be alerted to the potential danger, and the department shall be notified.

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

Rule 1200-8-6-.08, Building Standards, is amended by deleting paragraphs (2), (5), subparagraph (7)(a), and paragraph (9) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (20) in its entirety, so that as amended, the new paragraphs (2), (5), subparagraph (7)(a), and paragraph (9) shall read:

- (2) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), National Electrical Code and the Guidelines for Design and Construction of Hospital and Health Care Facilities as adopted by the Board for Licensing Health Care Facilities. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (5) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-6-.08(3) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.

- (7) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (9) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the institution. The distribution of such review may be modified at the discretion of the department.

Rule 1200-8-6-.08, Building Standards, is amended by deleting paragraph (18) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-6-.08, Building Standards, is amended by adding the following language as new paragraph (6) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (6) shall read:

- (6) Notice of satisfactory review from the department constitutes compliance with this requirement if construction begins within one hundred eighty (180) days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.

Rule 1200-8-6-.08, Building Standards, is amended by adding the following language as new paragraph (2) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (2) shall read:

- (2) Construction and renovation projects shall provide for the safety and protection of residents and personnel.

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

Rule 1200-8-6-.09, Life Safety, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) The nursing home shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. Fire drills shall be held at least quarterly for each work shift for nursing home personnel in each separate resident-occupied nursing home building. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which document and evaluate these drills must be maintained for at least three (3) years.

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

Rule 1200-8-6-.12, Resident Rights, is amended by deleting subparagraphs (1)(o) and (1)(p) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(o) and (1)(p) shall read:

- (1) (o) To refuse experimental treatment and drugs. The resident's or health care decision maker's written consent for participation in research must be obtained and retained in the medical record;

- (1) (p) To have records kept confidential and private. Written consent by the resident must be obtained prior to release of information except to persons authorized by law. If the resident lacks capacity, written consent is required from the resident's health care decision maker. The nursing home must have policies to govern access and duplication of the resident's record;

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-901, and 68-11-902.*

Rule 1200-8-6-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, is amended by deleting the rule in its entirety and renaming the rule 1200-8-6-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each nursing home shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the resident could have made while having capacity. The advance directive must be in writing and signed by the resident. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the resident's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects a resident instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the surrogate or health care decision-maker shall consider the resident's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.

- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A resident having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
 1. the resident has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.
 - (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:
 1. the resident's spouse, unless legally separated;
 2. the resident's adult child;

3. the resident's parent;
 4. the resident's adult sibling;
 5. any other adult relative of the resident; or
 6. any other adult who satisfies the requirements of 1200-8-6-.13(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;
 2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the resident during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-6-.13(15)(c) thru 1200-8-6-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

- (k) Except as provided in 1200-8-6-.13(15)(l):
 - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 - 1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and
 - 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
- (18) Except as provided in 1200-8-6-.13(19) thru 1200-8-6-.13(21), a health care provider or institution providing care to a resident shall:
- (a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
 - (b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:

- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-6-.13(19) thru 1200-8-6-.13(21) shall:
- (a) promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;
 - (b) provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.

- (28) The withholding or withdrawal of medical care from a resident in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
1. with the consent of the patient; or
 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.
- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the resident's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

Rule 1200-8-6-.14, Disaster Preparedness, is amended by deleting part (2)(a)7. in its entirety.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of August, 2004. (08-14)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-8-10
STANDARDS FOR AMBULATORY SURGICAL TREATMENT CENTERS**

AMENDMENTS

Rule 1200-8-10-.01, Definitions, is amended by deleting paragraphs (3), (24), (25), (37), and (44) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (22), (23), (35), and (42) shall read:

- (3) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (24) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.

- (25) Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient’s health care decision-maker is one of the following: the patient’s health care agent as specified in an advance directive, the patient’s court-appointed legal guardian or conservator with health care decision-making authority, or the patient’s surrogate as determined pursuant to Rule 1200-8-10-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (37) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient’s representative expresses the goals of the patient.
- (44) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-10-.01, Definitions, is amended by deleting paragraph (27) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-10-.01, Definitions, is amended by deleting paragraph (14) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-10-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual’s ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual’s agent, guardian, or surrogate, to have primary responsibility for the individual’s health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual’s physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.

- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the patient directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 68-11-1702.

Rule 1200-8-10-.04, Administration, is amended by adding the following language as new subparagraph (20)(b) and re-numbering the remaining subparagraphs appropriately, so that as amended, the new subparagraph (20)(b) shall read:

- (20) (b) The physical environment of the ambulatory surgical treatment center shall be maintained in a safe, clean and sanitary manner.
 - 1. Any condition on the ambulatory surgical treatment site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

2. Cats, dogs or other animals shall not be allowed in any part of the ambulatory surgical treatment center except for specially trained animals for the handicapped and except as addressed by ambulatory surgical treatment center policy for pet therapy programs. The ambulatory surgical treatment center shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the ambulatory surgical treatment center performed by medically trained personnel.
3. A bed complete with mattress and pillow shall be provided. In addition, patient units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.
4. Individual wash cloths, towels and bed linens must be provided for each patient. Linen shall not be interchanged from patient to patient until it has been properly laundered.
5. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.
6. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with patients shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between patients and as often as necessary to maintain them in a clean and sanitary condition. Single use, patient disposable items are acceptable but shall not be reused.

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

Rule 1200-8-10-.08, Building Standards, is amended by deleting paragraphs (3) and (6), and subparagraph (8)(a) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3) and (6), and subparagraph (8)(a) shall read:

- (3) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), National Electrical Code and the guidelines for Design and Construction of Hospital and Health Care Facilities as adopted by the Board for Licensing Health Care Facilities. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the American with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (6) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-10-.08(4) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (8) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.

Rule 1200-8-10-.08, Building Standards, is amended by deleting paragraph (20) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-10-.08, Building Standards, is amended by adding the following language as new paragraph (3) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (3) shall read:

- (3) Construction and renovation projects shall provide for the safety and protection of patients and personnel.

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

Rule 1200-8-10-.09, Life Safety, is amended by deleting paragraph (3) in its entirety.

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

Rule 1200-8-10-.10, Infectious and Hazardous Waste, is amended by deleting paragraph (12) in its entirety.

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

Rule 1200-8-10-.12, Patient Rights, is amended by deleting subparagraphs (1)(d) and (1)(e) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(d) and (1)(e) shall read:

- (1) (d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (1) (e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The hospital must have policies to govern access and duplication of the patient's record;

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

Rule 1200-8-10-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-10-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each ambulatory surgical treatment center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the patient could have made while having capacity. The advance directive must be in writing and signed by the patient. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the patient's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient.

- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects a patient instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the surrogate or health care decision-maker shall consider the patient's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A patient having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.

- (b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:
 - 1. the patient has been determined by the designated physician to lack capacity, and
 - 2. no surrogate or guardian has been appointed, or
 - 3. the surrogate or guardian is not reasonably available.
- (c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.
- (d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the patient's spouse, unless legally separated;
 - 2. the patient's adult child;
 - 3. the patient's parent;
 - 4. the patient's adult sibling;
 - 5. any other adult relative of the patient; or
 - 6. any other adult who satisfies the requirements of 1200-8-10-.13(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
 - 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;
 - 2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;
 - 3. The proposed surrogate's demonstrated care and concern;
 - 4. The proposed surrogate's availability to visit the patient during his or her illness; and
 - 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.

- (h) If none of the individuals eligible to act as a surrogate under 1200-8-10-.13(15)(c) thru 1200-8-10-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:
 - 1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 - 2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
 - (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
 - (j) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.
 - (k) Except as provided in 1200-8-10-.13(15)(l):
 - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 - 1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and
 - 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.

- (17) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.
- (18) Except as provided in 1200-8-10-.13(19) thru 1200-8-10-.13(21), a health care provider or institution providing care to a patient shall:
 - (a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and
 - (b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-10-.13(19) thru 1200-8-10-.13(21) shall:
 - (a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;
 - (b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a patient in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.

- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of August, 2004. (08-13)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 19th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-8-11
STANDARDS FOR HOMES FOR THE AGED**

AMENDMENTS

Rule 1200-8-11-.01, Definitions, is amended by deleting paragraphs (2), (14), and (15) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (14), and (15) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (14) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (15) Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-11-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

Rule 1200-8-11-.01, Definitions, is amended by deleting paragraph (21) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-11-.01, Definitions, is amended by deleting paragraph (9) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-11-.01, Definitions, is amended by adding the following language as twenty (20), new, appropriately numbered paragraphs, so that as amended, the twenty (20), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the resident directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the resident's physician which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, and 68-11-1702.

Rule 1200-8-11-.02, Licensing Procedures, is amended by deleting part (2)(b)1. in its entirety and substituting instead the following language, and is further amended by adding the following language as new part (2)(b)2. and re-numbering the remaining parts appropriately, so that as amended, the new parts (2)(b)1. and (2)(b)2. shall read:

- | | | | | | |
|-----|-----|----|-------------------------|----|--------|
| (2) | (b) | 1. | Less than 6 beds | \$ | 200.00 |
| (2) | (b) | 2. | 6 to 25 beds, inclusive | \$ | 600.00 |

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

Rule 1200-8-11-.07, Building Standards, is amended by deleting paragraphs (3), (5), (8), subparagraph (10)(a), and paragraph (12) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (5), (8), subparagraph (10)(a), and paragraph (12) shall read:

- (3) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), and the National Electrical Code. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (5) No new home shall be constructed, nor shall major alterations be made to existing homes, or change in facility type be made without prior written approval, and unless in accordance with plans and specifications approved in advance by the department. Before any new home is licensed or before any alteration or expansion of a licensed home can be approved, the applicant must furnish two (2) complete sets of plans and specifications to the department, together with fees and other information as required. For those existing single family dwellings being converted into a residential home for the aged with six (6) or fewer beds, only one (1) set of schematics shall be submitted to the department for approval. Plans and specifications for new construction and major renovations, other than minor alterations not affecting fire and life safety or functional issues shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer.
- (8) The codes in effect at the time of submittal of phased plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.
- (10) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner’s risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (12) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the home for the aged. The distribution of such review may be modified at the discretion of the department.

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

Rule 1200-8-11-.07, Building Standards, is amended by adding the following language as new paragraph (3) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (3) shall read:

- (3) Construction and renovation projects shall provide for the safety and protection of residents and personnel.

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

Rule 1200-8-11-.08, Life Safety, is amended by deleting paragraph (2) in its entirety.

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

Rule 1200-8-11-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, is amended by deleting the rule in its entirety and renaming the rule 1200-8-11-.12, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each home for the aged shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the resident could have made while having capacity. The advance directive must be in writing and signed by the resident. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the resident's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects a resident instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the surrogate or health care decision-maker shall consider the resident's personal values to the extent known.

- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A resident having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
 1. the resident has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.
 - (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:

1. the resident's spouse, unless legally separated;
 2. the resident's adult child;
 3. the resident's parent;
 4. the resident's adult sibling;
 5. any other adult relative of the resident; or
 6. any other adult who satisfies the requirements of 1200-8-11-.12(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;
 2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the resident during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-11-.12(15)(c) thru 1200-8-11-.12(15)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the

resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.

- (k) Except as provided in 1200-8-11-.12(15)(l):
 - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 - 1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and
 - 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
- (18) Except as provided in 1200-8-11-.12(19) thru 1200-8-11-.12(21), a health care provider or institution providing care to a resident shall:
- (a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
 - (b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.

- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-11-.12(19) thru 1200-8-11-.12(21) shall:
- (a) promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;
 - (b) provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a resident in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
1. with the consent of the patient; or
 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.
- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the resident's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of August, 2004. (08-09)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 18th day of October, 2004.

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

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

**SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-15
STANDARDS FOR RESIDENTIAL HOSPICES

AMENDMENTS**

Rule 1200-8-15-.01, Definitions, is amended by deleting paragraphs (2), (18), (19), (39), and (49) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (18), (19), (39), and (49) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

- (18) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (19) Health Care Decision-maker. In the case of an incompetent patient or resident, or a patient or resident who lacks decision-making capacity, the patient's or resident's health care decision-maker is one of the following: the patient's or resident's health care agent as specified in an advance directive, the patient's or resident's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's or resident's surrogate as determined pursuant to Rule 1200-8-15-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (39) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or resident or other medical or surgical treatments to achieve the expressed goals of the informed patient or resident. In the case of the incompetent patient or resident, the patient's or resident's representative expresses the goals of the patient or resident.
- (49) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-15-.01, Definitions, is amended by deleting paragraph (29) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-15-.01, Definitions, is amended by deleting paragraph (13) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-15-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient or resident to make health care decisions while having the capacity to do so. A patient or resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient or resident shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.

- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the patient or resident directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's or resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a patient's or resident's agent or guardian, authorized to make a health care decision for the patient or resident.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient or resident.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the patient's or resident's physician which states that in the event the patient or resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1702.

Rule 1200-8-15-.06, Basic Hospice Functions, is amended by adding the following language as new subparagraph (7)(b) and re-numbering the remaining subparagraphs appropriately, so that as amended, the new subparagraph (7)(b) shall read:

- (7) (b) The physical environment shall be maintained in such a manner to assure the safety and well being of the patients and/or residents.
 1. Any condition on the residential hospice site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature

used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

2. Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair patients and/or residents.
3. Equipment and supplies for physical examination and emergency treatment of patients and/or residents shall be available.
4. A bed complete with mattress and pillow shall be provided. In addition, patients and/or residents units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.
5. Individual wash cloths, towels and bed linens must be provided for each patient and/or resident. Linen shall not be interchanged from patient to patient or resident to resident until it has been properly laundered.
6. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.
7. Items of equipment coming into intimate contact with patients and/or residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between patients and/or residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, disposable items are acceptable but shall not be reused.
8. The facility shall have written policies and procedures governing care of patients and/or residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any patient/resident area falls below 65° F. or exceeds 85° F., or is reasonably expected to, the facility shall be alerted to the potential danger, and the Department shall be notified.

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

Rule 1200-8-15-.06, Basic Hospice Functions, is amended by deleting subparagraph (12)(n) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (12)(n) shall read:

- (12) (n) Any unused portions of prescriptions shall be turned over to the patient or resident only on a written order by the physician. A notation of drugs released to the patient or resident shall be entered into the medical record. All unused prescriptions left in a residential hospice shall be destroyed on the premises and recorded by a pharmacist. Such record shall be kept in the residential hospice.

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

Rule 1200-8-15-.08, Building Standards, is amended by deleting paragraphs (2), (5), subparagraph (7)(a), and paragraph (9) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (21) in its entirety, so that as amended, the new paragraphs (2), (5), subparagraph (7)(a), and paragraph (9) shall read:

- (2) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code,

ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), National Electrical Code and the Guidelines for Design and Construction of Hospital and Health Care Facilities as adopted by the Board for Licensing Health Care Facilities. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.

- (5) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-15-.08(3) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (7) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (9) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the institution. The distribution of such review may be modified at the discretion of the department.

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

Rule 1200-8-15-.08, Building Standards, is amended by deleting paragraph (18) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-15-.08, Building Standards, is amended by adding the following language as new paragraph (6) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (6) shall read:

- (6) Notice of satisfactory review from the department constitutes compliance with this requirement if construction begins within one hundred eighty (180) days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.

Rule 1200-8-15-.08, Building Standards, is amended by adding the following language as new paragraph (2) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (2) shall read:

- (2) Construction and renovation projects shall provide for the safety and protection of patients and/or residents and personnel.

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

Rule 1200-8-15-.09, Life Safety, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) The residential hospice shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. Fire drills shall be

held at least quarterly for each work shift for residential hospice personnel in each separate patient/resident-occupied residential hospice building. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which document and evaluate these drills must be maintained for at least three (3) years.

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

Rule 1200-8-15-.12, Patient/Resident Rights, is amended by deleting subparagraphs (1)(p) and (1)(q) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(p) and (1)(q) shall read:

- (1) (p) To refuse experimental treatment and drugs. The patient and/or resident's or health care decision maker's written consent for participation in research must be obtained and retained in the medical record;
- (1) (q) To have records kept confidential and private. Written consent by the patient and/or resident must be obtained prior to release of information except to persons authorized by law. If the patient and/or resident lacks capacity, written consent is required from the patient and/or resident's health care decision maker. The residential hospice must have policies to govern access and duplication of the patient and/or resident's record;

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-901, and 68-11-902.

Rule 1200-8-15-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients or Residents, is amended by deleting the rule in its entirety and renaming the rule 1200-8-15-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each residential hospice shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient or resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients or residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the patient or resident could have made while having capacity. The advance directive must be in writing and signed by the patient or resident. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the patient's or resident's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the patient or resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient or resident upon the death of the patient or resident.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the patient or resident lacks capacity, and ceases to be effective upon a determination that the patient or resident has recovered capacity.

- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a patient or resident lacks or has recovered capacity, or that another condition exists that affects a patient or resident instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the patient's or resident's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the patient's or resident's best interest. In determining the patient's or resident's best interest, the surrogate or health care decision-maker shall consider the patient's or resident's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the patient's or resident's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A patient or resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A patient or resident having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a patient or resident who is an adult or emancipated minor if and only if:
 1. the patient or resident has been determined by the designated physician to lack capacity, and

2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
- (c) In the case of a patient or resident who lacks capacity, the patient's or resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient or resident is receiving health care.
- (d) The patient's or resident's surrogate shall be an adult who has exhibited special care and concern for the patient or resident, who is familiar with the patient's or resident's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
1. the patient's or resident's spouse, unless legally separated;
 2. the patient's or resident's adult child;
 3. the patient's or resident's parent;
 4. the patient's or resident's adult sibling;
 5. any other adult relative of the patient or resident; or
 6. any other adult who satisfies the requirements of 1200-8-15-.13(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient or resident shall be eligible to serve as the patient's or resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or resident or in accordance with the patient's or resident's best interests;
 2. The proposed surrogate's regular contact with the patient or resident prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the patient or resident during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-15-.13(15)(c) thru 1200-8-15-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the patient or resident after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the patient's or resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the patient or resident may make all health care decisions for the patient or resident that the patient or resident could make on the patient or resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient or resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's or resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient or resident is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-15-.13(15)(l):
1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's or resident's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the patient or resident by blood, marriage, or adoption; and
 2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a patient or resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the patient's or resident's individual instructions and may not revoke the patient's or resident's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.

- (17) A designated physician who makes or is informed of a determination that a patient or resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the patient's or resident's current clinical record and communicate the determination to the patient or resident, if possible, and to any person then authorized to make health care decisions for the patient or resident.
- (18) Except as provided in 1200-8-15-.13(19) thru 1200-8-15-.13(21), a health care provider or institution providing care to a patient or resident shall:
 - (a) comply with an individual instruction of the patient or resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient or resident; and
 - (b) comply with a health care decision for the patient or resident made by a person then authorized to make health care decisions for the patient or resident to the same extent as if the decision had been made by the patient or resident while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or resident or to a person then authorized to make health care decisions for the patient or resident.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-15-.13(19) thru 1200-8-15-.13(21) shall:
 - (a) promptly so inform the patient or resident, if possible, and any person then authorized to make health care decisions for the patient or resident;
 - (b) provide continuing care to the patient or resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the patient or resident or person then authorized to make health care decisions for the patient or resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient or resident to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient or resident has the same rights as the patient or resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient or resident, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a patient or resident in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the patient or resident is an adult who is capable of making an informed decision, the patient's or resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient or resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient or resident be resuscitated by the person authorized to consent on the patient's or resident's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.

- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient or resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's or resident's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient or resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

Rule 1200-8-15-.14, Disaster Preparedness, is amended by deleting part (2)(a)7. in its entirety.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of August, 2004. (08-10)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 19th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-17

ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL REHABILITATION TREATMENT FACILITIES

AMENDMENTS

Rule 1200-8-17-.01, Definitions, is amended by deleting paragraphs (3), (29), (30), (39), and (42) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (29), (30), (39), and (42) shall read:

- (3) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (29) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (30) Health Care Decision-maker. In the case of an incompetent client, or a client who lacks decision-making capacity, the client's health care decision-maker is one of the following: the client's health care agent as specified in an advance directive, the client's court-appointed legal guardian or conservator with health care decision-making authority, or the client's surrogate as determined pursuant to Rule 1200-8-17-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (39) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the client or other medical or surgical treatments to achieve the expressed goals of the informed client. In the case of the incompetent client, the client's representative expresses the goals of the client.
- (42) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-17-.01, Definitions, is amended by deleting paragraph (32) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-17-.01, Definitions, is amended by deleting paragraph (21) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-17-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a client to make health care decisions while having the capacity to do so. A client shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a client shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the client directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the client's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a client's agent or guardian, authorized to make a health care decision for the client.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the client.

- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the client's physician which states that in the event the client suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-17-.07, Building Standards, is amended by deleting paragraph (3), subparagraph (8)(a), and paragraph (10) in their entirety and substituting instead the following language, so that as amended, the new paragraph (3), subparagraph (8)(a), and paragraph (10) shall read:

- (3) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), and the National Electrical Code. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (8) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (10) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the home for the aged. The distribution of such review may be modified at the discretion of the department.

Rule 1200-8-17-.07, Building Standards, is amended by adding the following language as new paragraph (3) and renumbering the remaining paragraphs appropriately, so that as amended, the new paragraph (3) shall read:

- (3) Construction and renovation projects shall provide for the safety and protection of residents and personnel.

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

Rule 1200-8-17-.08, Life Safety, is amended by deleting paragraph (2) in its entirety.

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

Rule 1200-8-17-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Clients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-17-.12, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each residential rehabilitation treatment facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a client who is incompetent or who lacks decision-making capacity, including but not limited to

allowing the withholding of CPR measures from individual clients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the client could have made while having capacity. The advance directive must be in writing and signed by the client. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the client's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the client by blood, marriage, or adoption and would not be entitled to any portion of the estate of the client upon the death of the client.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the client lacks capacity, and ceases to be effective upon a determination that the client has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a client lacks or has recovered capacity, or that another condition exists that affects a client instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the client's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the client's best interest. In determining the client's best interest, the surrogate or health care decision-maker shall consider the client's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A client having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A client having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.

- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a client who is an adult or emancipated minor if and only if:
 1. the client has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a client who lacks capacity, the client's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the client is receiving health care.
 - (d) The client's surrogate shall be an adult who has exhibited special care and concern for the client, who is familiar with the client's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:
 1. the client's spouse, unless legally separated;
 2. the client's adult child;
 3. the client's parent;
 4. the client's adult sibling;
 5. any other adult relative of the client; or
 6. any other adult who satisfies the requirements of 1200-8-17-.12(15)(d).
 - (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the client shall be eligible to serve as the client's surrogate.
 - (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the client or in accordance with the client's best interests;

2. The proposed surrogate's regular contact with the client prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the client during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-17-.12(15)(c) thru 1200-8-17-.12(15)(g) is reasonably available, the designated physician may make health care decisions for the client after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the client's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the client may make all health care decisions for the client that the client could make on the client's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a client upon a decision of the surrogate only when the designated physician and a second independent physician certify in the client's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the client is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-17-.12(15)(l):
1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the client's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the client by blood, marriage, or adoption; and
 2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a client to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.

- (16) Guardian.
- (a) A guardian shall comply with the client's individual instructions and may not revoke the client's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a client lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the client's current clinical record and communicate the determination to the client, if possible, and to any person then authorized to make health care decisions for the client.
- (18) Except as provided in 1200-8-17-.12(19) thru 1200-8-17-.12(21), a health care provider or institution providing care to a client shall:
- (a) comply with an individual instruction of the client and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the client; and
 - (b) comply with a health care decision for the client made by a person then authorized to make health care decisions for the client to the same extent as if the decision had been made by the client while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the client or to a person then authorized to make health care decisions for the client.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-17-.12(19) thru 1200-8-17-.12(21) shall:
- (a) promptly so inform the client, if possible, and any person then authorized to make health care decisions for the client;
 - (b) provide continuing care to the client until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the client or person then authorized to make health care decisions for the client refuses assistance, immediately make all reasonable efforts to assist in the transfer of the client to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.

- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a client has the same rights as the client to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
 - (a) complying with a health care decision of a person apparently having authority to make a health care decision for a client, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a client in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
 - (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the client is an adult who is capable of making an informed decision, the client's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the client is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the client be resuscitated by the person authorized to consent on the client's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or

by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.

- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the client in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the client's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a client in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of August, 2004. (08-16)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 19th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-22

ALCOHOL AND OTHER DRUGS OF ABUSE HALFWAY HOUSE TREATMENT FACILITIES

AMENDMENTS

Rule 1200-8-22-.01, Definitions, is amended by deleting paragraphs (3), (36), (41), and (50) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (36), (41), and (50) shall read:

- (3) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (36) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the client or other medical or surgical treatments to achieve the expressed goals of the informed client. In the case of the incompetent client, the client's representative expresses the goals of the client.
- (41) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.
- (50) Surrogate. An individual, other than a client's agent or guardian, authorized to make a health care decision for the client.

Rule 1200-8-22-.01, Definitions, is amended by adding the following language as twenty (20), new, appropriately numbered paragraphs, so that as amended, the twenty (20), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a client to make health care decisions while having the capacity to do so. A client shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a client shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- () Health Care Decision-maker. In the case of an incompetent client, or a client who lacks decision-making capacity, the client's health care decision-maker is one of the following: the client's health care agent as specified in an advance directive, the client's court-appointed legal guardian or conservator with health care decision-making authority, or the client's surrogate as determined pursuant to Rule 1200-8-22-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the client directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the client's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the client.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the client's physician which states that in the event the client suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

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

Rule 1200-8-22-.07, Building Standards, is amended by deleting paragraph (3), subparagraph (8)(a), and paragraph (10) in their entirety and substituting instead the following language, so that as amended, the new paragraph (3), subparagraph (8)(a), and paragraph (10) shall read:

- (3) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), and the National Electrical Code. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (8) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (10) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the home for the aged. The distribution of such review may be modified at the discretion of the department.

Rule 1200-8-22-.07, Building Standards, is amended by adding the following language as new paragraph (3) and renumbering the remaining paragraphs appropriately, so that as amended, the new paragraph (3) shall read:

- (3) Construction and renovation projects shall provide for the safety and protection of patients and/or residents and personnel.

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

Rule 1200-8-22-.08, Life Safety, is amended by deleting paragraph (2) in its entirety.

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

Rule 1200-8-22-.12, Repealed, is amended by deleting the catchline in its entirety and substituting the following language, Policies and Procedures for Health Care Decision-Making, and is further amended by adding the following language as paragraphs (1) thru (29), so that as amended, the new catchline and new paragraphs (1) thru (29) shall read:

- (1) Pursuant to this Rule, each halfway house treatment facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a client who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual clients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the client could have made while

- having capacity. The advance directive must be in writing and signed by the client. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the client's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the client by blood, marriage, or adoption and would not be entitled to any portion of the estate of the client upon the death of the client.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the client lacks capacity, and ceases to be effective upon a determination that the client has recovered capacity.
 - (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
 - (5) A determination that a client lacks or has recovered capacity, or that another condition exists that affects a client instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
 - (6) An agent shall make a health care decision in accordance with the client's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the client's best interest. In determining the client's best interest, the surrogate or health care decision-maker shall consider the client's personal values to the extent known.
 - (7) An advance directive may include the individual's nomination of a court-appointed guardian.
 - (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
 - (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
 - (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
 - (11) A client having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
 - (12) A client having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
 - (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
 - (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.

(15) Surrogates.

- (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
- (b) A surrogate may make a health care decision for a client who is an adult or emancipated minor if and only if:
 - 1. the client has been determined by the designated physician to lack capacity, and
 - 2. no surrogate or guardian has been appointed, or
 - 3. the surrogate or guardian is not reasonably available.
- (c) In the case of a client who lacks capacity, the client's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the client is receiving health care.
- (d) The client's surrogate shall be an adult who has exhibited special care and concern for the client, who is familiar with the client's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the client's spouse, unless legally separated;
 - 2. the client's adult child;
 - 3. the client's parent;
 - 4. the client's adult sibling;
 - 5. any other adult relative of the client; or
 - 6. any other adult who satisfies the requirements of 1200-8-22-.12(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the client shall be eligible to serve as the client's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
 - 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the client or in accordance with the client's best interests;
 - 2. The proposed surrogate's regular contact with the client prior to and during the incapacitating illness;
 - 3. The proposed surrogate's demonstrated care and concern;
 - 4. The proposed surrogate's availability to visit the client during his or her illness; and

5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
 - (h) If none of the individuals eligible to act as a surrogate under 1200-8-22-.12(15)(c) thru 1200-8-22-.12(15)(g) is reasonably available, the designated physician may make health care decisions for the client after the designated physician either:
 1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the client's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
 - (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
 - (j) A surrogate who has not been designated by the client may make all health care decisions for the client that the client could make on the client's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a client upon a decision of the surrogate only when the designated physician and a second independent physician certify in the client's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the client is highly unlikely to regain capacity to make medical decisions.
 - (k) Except as provided in 1200-8-22-.12(15)(l):
 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the client's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 1. the employee so designated is a relative of the client by blood, marriage, or adoption; and
 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a client to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the client's individual instructions and may not revoke the client's advance directive absent a court order.

- (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a client lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the client's current clinical record and communicate the determination to the client, if possible, and to any person then authorized to make health care decisions for the client.
- (18) Except as provided in 1200-8-22-.12(19) thru 1200-8-22-.12(21), a health care provider or institution providing care to a client shall:
- (a) comply with an individual instruction of the client and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the client; and
 - (b) comply with a health care decision for the client made by a person then authorized to make health care decisions for the client to the same extent as if the decision had been made by the client while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the client or to a person then authorized to make health care decisions for the client.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-22-.12(19) thru 1200-8-22-.12(21) shall:
- (a) promptly so inform the client, if possible, and any person then authorized to make health care decisions for the client;
 - (b) provide continuing care to the client until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the client or person then authorized to make health care decisions for the client refuses assistance, immediately make all reasonable efforts to assist in the transfer of the client to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.

- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a client has the same rights as the client to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
 - (a) complying with a health care decision of a person apparently having authority to make a health care decision for a client, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a client in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
 - (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the client is an adult who is capable of making an informed decision, the client's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the client is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the client be resuscitated by the person authorized to consent on the client's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility,

program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.

- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the client in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the client's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a client in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of August, 2004. (08-17)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 19th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

Rule 1200-8-23-.01, Definitions, is amended by deleting paragraphs (3), (29), (30), (39), and (44) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (29), (30), (39), and (44) shall read:

- (3) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (29) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (30) Health Care Decision-maker. In the case of an incompetent client, or a client who lacks decision-making capacity, the client's health care decision-maker is one of the following: the client's health care agent as specified in an advance directive, the client's court-appointed legal guardian or conservator with health care decision-making authority, or the client's surrogate as determined pursuant to Rule 1200-8-23-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (39) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the client or other medical or surgical treatments to achieve the expressed goals of the informed client. In the case of the incompetent client, the client's representative expresses the goals of the client.
- (44) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-23-.01, Definitions, is amended by deleting paragraph (32) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-23-.01, Definitions, is amended by deleting paragraph (21) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-23-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a client to make health care decisions while having the capacity to do so. A client shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a client shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the client directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the client's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a client's agent or guardian, authorized to make a health care decision for the client.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the client.

- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the client's physician which states that in the event the client suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202 through 4-5-206, 34-11-101, 68-11-201, 68-11-202, 68-11-204, 68-11-206 through 68-11-211, 68-11-213, 68-11-224, and 68-11-1702.

Rule 1200-8-23-.07, Building Standards, is amended by deleting paragraph (3), subparagraph (8)(a), and paragraph (10) in their entirety and substituting instead the following language, so that as amended, the new paragraph (3), subparagraph (8)(a), and paragraph (10) shall read:

- (3) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), and the National Electrical Code. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (8) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (10) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the home for the aged. The distribution of such review may be modified at the discretion of the department.

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

Rule 1200-8-23-.07, Building Standards, is amended by adding the following language as new paragraph (3) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (3) shall read:

- (3) Construction and renovation projects shall provide for the safety and protection of residents and personnel.

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

Rule 1200-8-23-.08, Life Safety, is amended by deleting paragraph (2) in its entirety.

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

Rule 1200-8-23-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Clients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-23-.12, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each residential detoxification treatment facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a client who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual clients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the client could have made while having capacity. The advance directive must be in writing and signed by the client. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the client's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the client by blood, marriage, or adoption and would not be entitled to any portion of the estate of the client upon the death of the client.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the client lacks capacity, and ceases to be effective upon a determination that the client has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a client lacks or has recovered capacity, or that another condition exists that affects a client instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the client's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the client's best interest. In determining the client's best interest, the surrogate or health care decision-maker shall consider the client's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A client having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

- (12) A client having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a client who is an adult or emancipated minor if and only if:
 - 1. the client has been determined by the designated physician to lack capacity, and
 - 2. no surrogate or guardian has been appointed, or
 - 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a client who lacks capacity, the client's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the client is receiving health care.
 - (d) The client's surrogate shall be an adult who has exhibited special care and concern for the client, who is familiar with the client's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the client's spouse, unless legally separated;
 - 2. the client's adult child;
 - 3. the client's parent;
 - 4. the client's adult sibling;
 - 5. any other adult relative of the client; or
 - 6. any other adult who satisfies the requirements of 1200-8-23-.12(15)(d).
 - (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the client shall be eligible to serve as the client's surrogate.
 - (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the client or in accordance with the client's best interests;
 2. The proposed surrogate's regular contact with the client prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the client during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-23-.12(15)(c) thru 1200-8-23-.12(15)(g) is reasonably available, the designated physician may make health care decisions for the client after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the client's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the client may make all health care decisions for the client that the client could make on the client's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a client upon a decision of the surrogate only when the designated physician and a second independent physician certify in the client's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the client is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-23-.12(15)(l):
1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the client's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the client by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a client to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
 - (a) A guardian shall comply with the client's individual instructions and may not revoke the client's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
 - (17) A designated physician who makes or is informed of a determination that a client lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the client's current clinical record and communicate the determination to the client, if possible, and to any person then authorized to make health care decisions for the client.
 - (18) Except as provided in 1200-8-23-.12(19) thru 1200-8-23-.12(21), a health care provider or institution providing care to a client shall:
 - (a) comply with an individual instruction of the client and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the client; and
 - (b) comply with a health care decision for the client made by a person then authorized to make health care decisions for the client to the same extent as if the decision had been made by the client while having capacity.
 - (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
 - (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the client or to a person then authorized to make health care decisions for the client.
 - (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
 - (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-23-.12(19) thru 1200-8-23-.12(21) shall:
 - (a) promptly so inform the client, if possible, and any person then authorized to make health care decisions for the client;

- (b) provide continuing care to the client until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the client or person then authorized to make health care decisions for the client refuses assistance, immediately make all reasonable efforts to assist in the transfer of the client to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a client has the same rights as the client to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a client, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a client in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (b) If the client is an adult who is capable of making an informed decision, the client's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the client is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the client be resuscitated by the person authorized to consent on the client's behalf shall revoke a universal do not resuscitate order.
- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the client in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the client's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a client in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 10th day of August, 2004. (08-18)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-24 STANDARDS FOR BIRTHING CENTERS

AMENDMENTS

Rule 1200-8-24-.01, Definitions, is amended by deleting paragraphs (1), (14), (15), (24), and (28) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1), (14), (15), (24), and (28) shall read:

- (1) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (14) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (15) Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-24-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (24) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.
- (28) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-24-.01, Definitions, is amended by deleting paragraph (19) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-24-.01, Definitions, is amended by deleting paragraph (10) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-24-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the patient directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-24-.07, Building Standards, is amended by deleting paragraphs (4), (7), (10), subparagraph (11)(a), and paragraph (13) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (4), (7), (10), subparagraph (11)(a), and paragraph (13), shall read:

- (4) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), National Electrical Code and the guidelines for Design and Construction of Hospital and Health Care Facilities as adopted by the Board for Licensing Health Care Facilities. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the American with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (7) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-24-.07(5) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (10) The codes in effect at the time of submittal of phased plans and specifications, as defined by these regulations shall be the codes to be used throughout the project.
- (11) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (13) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the facility. The distribution of such review may be modified at the discretion of the department.

Rule 1200-8-24-.07, Building Standards, is amended by deleting paragraph (23) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-24-.07, Building Standards, is amended by adding the following language as new paragraph (4) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (4) shall read:

- (4) Construction and renovation projects shall provide for the safety and protection of patients and personnel.

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

Rule 1200-8-24-.08, Life Safety, is amended by deleting paragraph (3) in its entirety.

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

Rule 1200-8-24-.11, Patient Rights, is amended by deleting subparagraphs (1)(d) and (1)(e) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(d) and (1)(e) shall read:

- (1) (d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (1) (e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The hospital must have policies to govern access and duplication of the patient's record;

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

Rule 1200-8-24-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-24-.12, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each birthing center shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the patient could have made while having capacity. The advance directive must be in writing and signed by the patient. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the patient's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.

- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects a patient instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the surrogate or health care decision-maker shall consider the patient's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A patient having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:
 1. the patient has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.

- (c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.
- (d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the patient's spouse, unless legally separated;
 - 2. the patient's adult child;
 - 3. the patient's parent;
 - 4. the patient's adult sibling;
 - 5. any other adult relative of the patient; or
 - 6. any other adult who satisfies the requirements of 1200-8-24-.12(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
 - 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;
 - 2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;
 - 3. The proposed surrogate's demonstrated care and concern;
 - 4. The proposed surrogate's availability to visit the patient during his or her illness; and
 - 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-24-.12(15)(c) thru 1200-8-24-.12(15)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:
 - 1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 - 2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
 - (j) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.
 - (k) Except as provided in 1200-8-24-.12(15)(1):
 - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 - 1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and
 - 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.
- (18) Except as provided in 1200-8-24-.12(19) thru 1200-8-24-.12(21), a health care provider or institution providing care to a patient shall:
- (a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

- (b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-24-.12(19) thru 1200-8-24-.12(21) shall:
- (a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;
 - (b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.

- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a patient in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
 - (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
 - (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
 - (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.
 - (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.

- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of August, 2004. (08-47)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 19th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

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

AMENDMENTS

Rule 1200-8-25-.01, Definitions, is amended by deleting paragraphs (3), (22), and (23) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (22), and (23) shall read:

- (3) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

- (22) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (23) Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-25-.12 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

Rule 1200-8-25-.01, Definitions, is amended by deleting paragraph (27) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-25-.01, Definitions, is amended by deleting paragraph (14) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-25-.01, Definitions, is amended by adding the following language as twenty-one (21), new, appropriately numbered paragraphs, so that as amended, the twenty-one (21), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.

- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the resident directly to a health care provider.
- () Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the resident's physician which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-25-.07, Building Standards, is amended by deleting paragraphs (3), (6), (9), subparagraph (10)(a), and paragraph (12) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3), (6), (9), subparagraph (10)(a), and paragraph (12) shall read:

- (3) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), and the National Electrical Code. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act

(A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.

- (6) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-25-.07(4) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (9) The codes in effect at the time of submittal of phased plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.
- (10) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (12) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the home for the aged. The distribution of such review may be modified at the discretion of the department.

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

Rule 1200-8-25-.07, Building Standards, is amended by adding the following language as new paragraph (3) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (3) shall read:

- (3) Construction and renovation projects shall provide for the safety and protection of patients and/or residents and personnel.

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

Rule 1200-8-25-.08, Life Safety, is amended by deleting paragraphs (3) and (24) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (3) and (24) shall read:

- (3) Residents who cannot evacuate within thirteen (13) minutes may be retained in the facility so long as such residents are retained in designated areas in accordance with Chapter 18 of the NFPA 2000 Edition of the Life Safety Code and Institutional Unrestrained Occupancy of the Standard Building Code.
- (24) No smoking signs shall be posted in areas where oxygen is used or stored.

Rule 1200-8-25-.08, Life Safety, is amended by deleting paragraph (2) in its entirety.

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

Rule 1200-8-25-.12, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, is amended by deleting the rule in its entirety and renaming the rule 1200-8-25-.12, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each assisted-care living facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the resident could have made while having capacity. The advance directive must be in writing and signed by the resident. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the resident's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects a resident instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the surrogate or health care decision-maker shall consider the resident's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

- (12) A resident having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
 1. the resident has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.
 - (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:
 1. the resident's spouse, unless legally separated;
 2. the resident's adult child;
 3. the resident's parent;
 4. the resident's adult sibling;
 5. any other adult relative of the resident; or
 6. any other adult who satisfies the requirements of 1200-8-25-.12(15)(d).
 - (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
 - (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;
 2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the resident during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-25-.12(15)(c) thru 1200-8-25-.12(15)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-25-.12(15)(l):
1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
 - (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
 - (17) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
 - (18) Except as provided in 1200-8-25-.12(19) thru 1200-8-25-.12(21), a health care provider or institution providing care to a resident shall:
 - (a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
 - (b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.
 - (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
 - (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.
 - (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
 - (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-25-.12(19) thru 1200-8-25-.12(21) shall:
 - (a) promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;

- (b) provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a resident in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.
- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the resident's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of August, 2004.
(08-45)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-26

STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOME HEALTH SERVICES

AMENDMENTS

Rule 1200-8-26-.01, Definitions, is amended by deleting paragraphs (2), (16), (17), (25), (32), and (44) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (16), (17), (25), (32), and (44) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (16) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (17) Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-26-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (25) Legal Guardian. Any person authorized to act for the patient pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.

- (32) **Medically Inappropriate Treatment.** Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.
- (44) **Social Work Assistant.** A person who has a baccalaureate degree in social work, psychology, sociology or other field related to social work, and has at least one (1) year of social work experience in a health care setting. Social work related fields include bachelor/masters degrees in psychology, sociology, human services (behavioral sciences, not human resources), masters degree in counseling fields (psychological guidance and guidance counseling) and degrees in gerontology.

Rule 1200-8-26-.01, Definitions, is amended by deleting paragraph (24) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-26-.01, Definitions, is amended by deleting paragraph (12) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-26-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () **Adult.** An individual who has capacity and is at least 18 years of age.
- () **Agent.** An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () **Capacity.** An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.
- () **Designated physician.** A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () **Guardian.** A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () **Health care.** Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () **Health care institution.** A health care institution as defined in T.C.A. § 68-11-201.
- () **Health care provider.** A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () **Individual instruction.** An individual's direction concerning a health care decision for the individual.
- () **Person.** An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

- () Personally informing. A communication by any effective means from the patient directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-26-.12, Patient Rights, is amended by deleting subparagraphs (1)(f) and (1)(g) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(f) and (1)(g) shall read:

- (1) (f) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (1) (g) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The agency must have policies to govern access and duplication of the patient's record;

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

Rule 1200-8-26-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-26-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each home health agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the patient could have made while having capacity. The advance directive must be in writing and signed by the patient. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the patient's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects a patient instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the surrogate or health care decision-maker shall consider the patient's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

- (12) A patient having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:
 1. the patient has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.
 - (d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:
 1. the patient's spouse, unless legally separated;
 2. the patient's adult child;
 3. the patient's parent;
 4. the patient's adult sibling;
 5. any other adult relative of the patient; or
 6. any other adult who satisfies the requirements of 1200-8-26-.13(15)(d).
 - (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.
 - (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;
 2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the patient during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-26-.13(15)(c) thru 1200-8-26-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-26-.13(15)(l):
1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
 - (a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
 - (17) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.
 - (18) Except as provided in 1200-8-26-.13(19) thru 1200-8-26-.13(21), a health care provider or institution providing care to a patient shall:
 - (a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and
 - (b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.
 - (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
 - (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.
 - (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
 - (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-26-.13(19) thru 1200-8-26-.13(21) shall:
 - (a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;
 - (b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;

- (c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a patient in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

- (b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.
- (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
- (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of August, 2004.
(08-46)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-27

STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING HOSPICE SERVICES

AMENDMENTS

Rule 1200-8-27-.01, Definitions, is amended by deleting paragraphs (2), (17), (18), (33), and (41) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (17), (18), (33), and (41) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (17) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (18) Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-27-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (33) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.
- (41) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-27-.01, Definitions, is amended by deleting paragraph (25) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-27-.01, Definitions, is amended by deleting paragraph (13) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-27-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the patient directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-27-.12, Patient Rights, is amended by deleting subparagraphs (1)(f) and (1)(g) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(f) and (1)(g) shall read:

- (1) (f) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (1) (g) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The agency must have policies to govern access and duplication of the patient's record;

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

Rule 1200-8-27-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-27-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each hospice agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the patient could have made while having capacity. The advance directive must be in writing and signed by the patient. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the patient's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient.

- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects a patient instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the surrogate or health care decision-maker shall consider the patient's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A patient having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:

1. the patient has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
- (c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.
- (d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
1. the patient's spouse, unless legally separated;
 2. the patient's adult child;
 3. the patient's parent;
 4. the patient's adult sibling;
 5. any other adult relative of the patient; or
 6. any other adult who satisfies the requirements of 1200-8-27-.13(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;
 2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the patient during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-27-.13(15)(c) thru 1200-8-27-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:

1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-27-.13(15)(l):
1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and
 2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

- (18) Except as provided in 1200-8-27-.13(19) thru 1200-8-27-.13(21), a health care provider or institution providing care to a patient shall:
- (a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and
 - (b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
- (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-27-.13(19) thru 1200-8-27-.13(21) shall:
- (a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;
 - (b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

- (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a patient in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
 - (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
 - (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate

the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.

- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of August, 2004. (08-50)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 19th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-8-28
STANDARDS FOR HIV SUPPORTIVE LIVING FACILITIES**

AMENDMENTS

Rule 1200-8-28-.01, Definitions, is amended by deleting paragraphs (2), (18), (19), (34), and (45) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (18), (19), (34), and (45) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (18) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (19) Health Care Decision-maker. In the case of an incompetent resident, or a resident who lacks decision-making capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed legal guardian or conservator with health care decision-making authority, or the resident's surrogate as determined pursuant to Rule 1200-8-28-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (34) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.
- (45) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Rule 1200-8-28-.01, Definitions, is amended by deleting paragraph (25) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-28-.01, Definitions, is amended by deleting paragraph (13) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-28-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the resident directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the resident's physician which states that in the event the resident suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, and 68-11-1702.

Rule 1200-8-28-.06, Basic Services, is amended by adding the following language as new subparagraph (6)(b) and renumbering the remaining subparagraphs appropriately, so that as amended, the new subparagraph (6)(b) shall read:

- (6) (b) The physical environment shall be maintained in such a manner to assure the safety and well being of the residents.
 1. Any condition on the HIV supportive living facility site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.
 2. Telephones shall be readily accessible and at least one (1) shall be equipped with sound amplification and shall be accessible to wheelchair residents.
 3. Equipment and supplies for physical examination and emergency treatment of residents shall be available.
 4. A bed complete with mattress and pillow shall be provided. In addition, resident units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.
 5. Individual wash cloths, towels and bed linens must be provided for each resident. Linen shall not be interchanged from resident to resident until it has been properly laundered.
 6. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.
 7. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with residents shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between residents and as often as necessary to maintain them in a clean and sanitary condition. Single use, resident disposable items are acceptable but shall not be reused.
 8. The facility shall have written policies and procedures governing care of residents during the failure of the air conditioning, heating or ventilation system, including plans for hypothermia and hyperthermia. When the temperature of any resident area falls below 65° F. or exceeds 85° F., or is reasonably expected to do so, the facility shall be alerted to the potential danger, and the Department shall be notified.

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

Rule 1200-8-28-.08, Building Standards, is amended by deleting paragraphs (2), (5), subparagraph (7)(a), and paragraph (9) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (21) in its entirety, so that as amended, the new paragraphs (2), (5), subparagraph (7)(a), and paragraph (9) shall read:

- (2) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), National Electrical Code

and the Guidelines for Design and Construction of Hospital and Health Care Facilities as adopted by the Board for Licensing Health Care Facilities. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.

- (5) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-28-.08(3) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (7) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of the phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (9) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the institution. The distribution of such review may be modified at the discretion of the department.

Rule 1200-8-28-.08, Building Standards, is amended by deleting paragraph (18) and re-numbering the remaining paragraphs appropriately.

Rule 1200-8-28-.08, Building Standards, is amended by adding the following language as new paragraph (6) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (6) shall read:

- (6) Notice of satisfactory review from the department constitutes compliance with this requirement if construction begins within one hundred eighty (180) days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.

Rule 1200-8-28-.08, Building Standards, is amended by adding the following language as new paragraph (2) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (2) shall read:

- (2) Construction and renovation projects shall provide for the safety and protection of residents and personnel.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 68-11-804.

Rule 1200-8-28-.09, Life Safety, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) The HIV supportive living facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. Fire drills shall be held at least quarterly for each work shift for HIV supportive living facility personnel in each separate resident-occupied HIV supportive living building. There shall be a written report documenting the evaluation of each drill and the action recommended or taken for any deficiencies found. Records which document and evaluate these drills must be maintained for at least three (3) years.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 68-11-804.

Rule 1200-8-28-.12, Resident Rights, is amended by deleting subparagraphs (1)(p) and (1)(q) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(p) and (1)(q) shall read:

- (1) (p) To refuse experimental treatment and drugs. The resident's or health care decision maker's written consent for participation in research must be obtained and retained in the medical record;
- (1) (q) To have records kept confidential and private. Written consent by the resident must be obtained prior to release of information except to persons authorized by law. If the resident lacks capacity, written consent is required from the resident's health care decision maker. The HIV supportive living facility must have policies to govern access and duplication of the resident's record;

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

Rule 1200-8-28-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Residents, is amended by deleting the rule in its entirety and renaming the rule 1200-8-28-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each HIV supportive living facility shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a resident who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual residents. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the resident could have made while having capacity. The advance directive must be in writing and signed by the resident. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the resident's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the resident by blood, marriage, or adoption and would not be entitled to any portion of the estate of the resident upon the death of the resident.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the resident lacks capacity, and ceases to be effective upon a determination that the resident has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a resident lacks or has recovered capacity, or that another condition exists that affects a resident instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

- (6) An agent shall make a health care decision in accordance with the resident's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the resident's best interest. In determining the resident's best interest, the surrogate or health care decision-maker shall consider the resident's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the resident's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A resident having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A resident having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a resident who is an adult or emancipated minor if and only if:
 1. the resident has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a resident who lacks capacity, the resident's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the resident is receiving health care.

- (d) The resident's surrogate shall be an adult who has exhibited special care and concern for the resident, who is familiar with the resident's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the resident's spouse, unless legally separated;
 - 2. the resident's adult child;
 - 3. the resident's parent;
 - 4. the resident's adult sibling;
 - 5. any other adult relative of the resident; or
 - 6. any other adult who satisfies the requirements of 1200-8-28-.13(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the resident shall be eligible to serve as the resident's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
 - 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the resident or in accordance with the resident's best interests;
 - 2. The proposed surrogate's regular contact with the resident prior to and during the incapacitating illness;
 - 3. The proposed surrogate's demonstrated care and concern;
 - 4. The proposed surrogate's availability to visit the resident during his or her illness; and
 - 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-28-.13(15)(c) thru 1200-8-28-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the resident after the designated physician either:
 - 1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 - 2. Obtains concurrence from a second physician who is not directly involved in the resident's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.

- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
 - (j) A surrogate who has not been designated by the resident may make all health care decisions for the resident that the resident could make on the resident's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a resident upon a decision of the surrogate only when the designated physician and a second independent physician certify in the resident's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the resident is highly unlikely to regain capacity to make medical decisions.
 - (k) Except as provided in 1200-8-28-.13(15)(l):
 - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the resident's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 - 1. the employee so designated is a relative of the resident by blood, marriage, or adoption; and
 - 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a resident to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the resident's individual instructions and may not revoke the resident's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a resident lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the resident's current clinical record and communicate the determination to the resident, if possible, and to any person then authorized to make health care decisions for the resident.
- (18) Except as provided in 1200-8-28-.13(19) thru 1200-8-28-.13(21), a health care provider or institution providing care to a resident shall:

- (a) comply with an individual instruction of the resident and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the resident; and
 - (b) comply with a health care decision for the resident made by a person then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.
- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the resident or to a person then authorized to make health care decisions for the resident.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-28-.13(19) thru 1200-8-28-.13(21) shall:
 - (a) promptly so inform the resident, if possible, and any person then authorized to make health care decisions for the resident;
 - (b) provide continuing care to the resident until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the resident or person then authorized to make health care decisions for the resident refuses assistance, immediately make all reasonable efforts to assist in the transfer of the resident to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a resident has the same rights as the resident to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
 - (a) complying with a health care decision of a person apparently having authority to make a health care decision for a resident, including a decision to withhold or withdraw health care;

- (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a resident in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 - 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the resident is an adult who is capable of making an informed decision, the resident's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the resident is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the resident be resuscitated by the person authorized to consent on the resident's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
 - (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

- (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the resident in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the resident's record.
- (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a resident in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
- (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

Rule 1200-8-28-.14, Disaster Preparedness, is amended by deleting part (2)(a)7. in its entirety.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of August, 2004. (08-51)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-8-32
STANDARDS FOR END STAGE RENAL DIALYSIS CLINICS**

AMENDMENTS

Rule 1200-8-32-.01, Definitions, is amended by deleting paragraphs (1), (19), (20), (33), and (42) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1), (19), (20), (33), and (42) shall read:

- (1) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (19) Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- (20) Health Care Decision-maker. In the case of an incompetent patient, or a patient who lacks decision-making capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an advance directive, the patient's court-appointed legal guardian or conservator with health care decision-making authority, or the patient's surrogate as determined pursuant to Rule 1200-8-32-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- (33) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.
- (42) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1702.

Rule 1200-8-32-.01, Definitions, is amended by deleting paragraph (25) and re-numbering the remaining paragraphs appropriately.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1702.

Rule 1200-8-32-.01, Definitions, is amended by deleting paragraph (11) and re-numbering the remaining paragraphs appropriately.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1702.

Rule 1200-8-32-.01, Definitions, is amended by adding the following language as nineteen (19), new, appropriately numbered paragraphs, so that as amended, the nineteen (19), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- () Personally informing. A communication by any effective means from the patient directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the patient's physician which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, and 68-11-1702.

Rule 1200-8-32-.08, Building Standards, is amended by deleting paragraphs (2) and (5), subparagraph (7)(a), and paragraph (9) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (18) in its entirety, so that as amended, the new paragraphs (2) and (5), subparagraph (7)(a), and paragraph (9) shall read:

- (2) After the application and licensure fees have been submitted, the building construction plans must be submitted to the department. All new facilities shall conform to the edition of the Standard Building Code, Standard Mechanical Code, Standard Plumbing Code, Standard Gas Code, ASHRAE Handbook of Fundamentals, National Fire Protection Code (NFPA), and National Electrical Code. In addition, all new facilities shall conform to the handicap code as required by T.C.A. § 68-11-18-204(a). When referring to height, area or construction type, the Standard Building Code shall prevail. All new and existing facilities are subject to the requirements of the American with Disabilities Act (A.D.A.). Where there are conflicts between requirements in the above listed codes and regulations and provisions of this chapter, the most restrictive shall apply.
- (5) In the event that submitted materials do not appear to satisfactorily comply with 1200-8-32-.08(3) the department shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.
- (7) (a) Two sets of plans shall be forwarded to the appropriate section of the department for review. After receipt of approval of phased construction plans, if applicable, the owner may proceed with site grading and foundation work prior to receipt of approval of final plans and specifications with the understanding that such work is at the owner's risk and without assurance that final approval of final plans and specifications shall be granted. Final plans and specifications shall be submitted for review and approval. Final approval must be received before proceeding beyond foundation work.
- (9) Review of plans and specifications shall be acknowledged in writing with copies sent to the architect and the owner, manager or other executive of the institution. The distribution of such review may be modified at the discretion of the department.

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

Rule 1200-8-32-.08, Building Standards, is amended by adding the following language as new paragraph (2) and renumbering the remaining paragraphs appropriately, so that as amended, the new paragraph (2) shall read:

- (2) Construction and renovation projects shall provide for the safety and protection of patients and personnel.

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

Rule 1200-8-32-.09, Life Safety, is amended by deleting paragraph (3) in its entirety.

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

Rule 1200-8-32-.12, Patient Rights, is amended by deleting subparagraphs (1)(d) and (1)(e) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(d) and (1)(e) shall read:

- (1) (d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (1) (e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care decision maker. The end stage renal dialysis clinic must have policies to govern access and duplication of the patient's record;

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

Rule 1200-8-32-.13, Policies and Procedures for Health Care Decision-Making for Incompetent Patients, is amended by deleting the rule in its entirety and renaming the rule 1200-8-32-.13, Policies and Procedures for Health Care Decision-Making, and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Pursuant to this Rule, each end stage renal dialysis clinic shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a patient who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual patients. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the patient could have made while having capacity. The advance directive must be in writing and signed by the patient. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the patient's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the patient by blood, marriage, or adoption and would not be entitled to any portion of the estate of the patient upon the death of the patient.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the patient lacks capacity, and ceases to be effective upon a determination that the patient has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a patient lacks or has recovered capacity, or that another condition exists that affects a patient instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.

- (6) An agent shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the patient's best interest. In determining the patient's best interest, the surrogate or health care decision-maker shall consider the patient's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the patient's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.
- (12) A patient having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if and only if:
 1. the patient has been determined by the designated physician to lack capacity, and
 2. no surrogate or guardian has been appointed, or
 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a patient who lacks capacity, the patient's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the patient is receiving health care.

- (d) The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.
- (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the patient's spouse, unless legally separated;
 - 2. the patient's adult child;
 - 3. the patient's parent;
 - 4. the patient's adult sibling;
 - 5. any other adult relative of the patient; or
 - 6. any other adult who satisfies the requirements of 1200-8-32-.13(15)(d).
- (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the patient shall be eligible to serve as the patient's surrogate.
- (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:
 - 1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the patient or in accordance with the patient's best interests;
 - 2. The proposed surrogate's regular contact with the patient prior to and during the incapacitating illness;
 - 3. The proposed surrogate's demonstrated care and concern;
 - 4. The proposed surrogate's availability to visit the patient during his or her illness; and
 - 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-32-.13(15)(c) thru 1200-8-32-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the patient after the designated physician either:
 - 1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 - 2. Obtains concurrence from a second physician who is not directly involved in the patient's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.

- (j) A surrogate who has not been designated by the patient may make all health care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the designated physician and a second independent physician certify in the patient's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions.
 - (k) Except as provided in 1200-8-32-.13(15)(l):
 - 1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 - 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the patient's treating health care provider.
 - (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
 - 1. the employee so designated is a relative of the patient by blood, marriage, or adoption; and
 - 2. the other requirements of this section are satisfied.
 - (m) A health care provider may require an individual claiming the right to act as surrogate for a patient to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
- (a) A guardian shall comply with the patient's individual instructions and may not revoke the patient's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
- (17) A designated physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the patient's current clinical record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.
- (18) Except as provided in 1200-8-32-.13(19) thru 1200-8-32-.13(21), a health care provider or institution providing care to a patient shall:
- (a) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and
 - (b) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

- (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
- (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.
- (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
- (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-32-.13(19) thru 1200-8-32-.13(21) shall:
 - (a) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;
 - (b) provide continuing care to the patient until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
 - (a) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.

- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a patient in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 1. with the consent of the patient; or
 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or
 3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
 - (b) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
 - (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
 - (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record.
 - (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
 - (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of August, 2004. (08-52)

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room 133 on the first floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 1:00 p.m. (CDST) on the 18th day of October, 2004.

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

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

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1200-8-34
STANDARDS FOR HOME CARE ORGANIZATIONS
PROVIDING PROFESSIONAL SUPPORT SERVICES**

AMENDMENTS

Rule 1200-8-34-.01, Definitions, is amended by deleting paragraphs (2), (16), and (27) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (16), and (27) shall read:

- (2) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.
- (16) Legal Guardian. Any person authorized to act for the consumer pursuant to any provision of T.C.A. §§34-5-102(4) or 34-11-101, or any successor statute thereto.
- (27) Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-34-.01, Definitions, is amended by adding the following language as twenty-two (22), new, appropriately numbered paragraphs, so that as amended, the twenty-two (22), new, appropriately numbered paragraphs shall read:

- () Adult. An individual who has capacity and is at least 18 years of age.
- () Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.
- () Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a consumer to make health care decisions while having the capacity to do so. A consumer shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a consumer shall have the burden of proving lack of capacity.
- () Designated physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.
- () Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.
- () Health care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).
- () Health care decision. Consent, refusal of consent or withdrawal of consent to health care.
- () Health Care Decision-maker. In the case of an incompetent consumer, or a consumer who lacks decision-making capacity, the consumer's health care decision-maker is one of the following: the consumer's health care agent as specified in an advance directive, the consumer's court-appointed legal guardian or conservator with health care decision-making authority, or the consumer's surrogate as determined pursuant to Rule 1200-8-34-.13 or T.C.A. §33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.
- () Health care institution. A health care institution as defined in T.C.A. § 68-11-201.
- () Health care provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business of practice of a profession.
- () Individual instruction. An individual's direction concerning a health care decision for the individual.
- () Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the consumer or other medical or surgical treatments to achieve the expressed goals of the informed consumer. In the case of the incompetent consumer, the consumer's representative expresses the goals of the consumer.
- () Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

- () Personally informing. A communication by any effective means from the consumer directly to a health care provider.
- () Power of attorney for health care. The designation of an agent to make health care decisions for the individual granting the power.
- () Qualified emergency medical service personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.
- () Reasonably available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the consumer's health care needs. Such availability shall include, but not be limited to, availability by telephone.
- () State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.
- () Supervising health care provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.
- () Surrogate. An individual, other than a consumer's agent or guardian, authorized to make a health care decision for the consumer.
- () Treating health care provider. A health care provider who at the time is directly or indirectly involved in providing health care to the consumer.
- () Universal do not resuscitate order. A written order that applies regardless of the treatment setting and that is signed by the consumer's physician which states that in the event the consumer suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-1702.

Rule 1200-8-34-.12, Consumer Rights, is amended by deleting subparagraphs (1)(f) and (1)(g) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1)(f) and (1)(g) shall read:

- (1) (f) To refuse experimental treatment and drugs. The consumer's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;
- (1) (g) To have their records kept confidential and private. Written consent by the consumer must be obtained prior to release of information except to persons authorized by law. If the consumer lacks capacity, written consent is required from the consumer's health care decision maker. The agency must have policies to govern access and duplication of the consumer's record;

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

Rule 1200-8-34-.13, Reserved, is amended by deleting the catchline in its entirety and substituting the following language, Policies and Procedures for Health Care Decision-Making, and is further amended by adding the following language as paragraphs (1) thru (29), so that as amended, the new catchline and new paragraphs (1) thru (29) shall read:

- (1) Pursuant to this Rule, each professional support services agency shall maintain and establish policies and procedures governing the designation of a health care decision-maker for making health care decisions for a consumer who is incompetent or who lacks decision-making capacity, including but not limited to allowing the withholding of CPR measures from individual consumers. An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.
- (2) An adult or emancipated minor may execute an advance directive for health care, which may authorize a surrogate or other person authorized to make any health care decision the consumer could have made while having capacity. The advance directive must be in writing and signed by the consumer. The advance directive must either be notarized or witnessed by two (2) witnesses and shall contain a clause that attests that the witnesses will comply with requirements of the advance directive. An advance directive remains in effect notwithstanding the consumer's last incapacity and may include individual instructions. A witness shall be a competent adult, who is not the surrogate or health care decision-maker, and at least one (1) of whom is not related to the consumer by blood, marriage, or adoption and would not be entitled to any portion of the estate of the consumer upon the death of the consumer.
- (3) Unless otherwise specified in an advance directive, the authority of a surrogate or health care decision-maker becomes effective only upon a determination that the consumer lacks capacity, and ceases to be effective upon a determination that the consumer has recovered capacity.
- (4) A facility may use any advance directive form meeting statute or that has been adopted by the Department.
- (5) A determination that a consumer lacks or has recovered capacity, or that another condition exists that affects a consumer instruction or the authority of a surrogate or health care decision-maker shall be made by the designated physician, who is authorized to consult with such other persons as he or she may deem appropriate.
- (6) An agent shall make a health care decision in accordance with the consumer's individual instructions, if any, and other wishes to the extent known to the surrogate or health care decision-maker. Otherwise, the surrogate or health care decision-maker shall make the decision in accordance with the consumer's best interest. In determining the consumer's best interest, the surrogate or health care decision-maker shall consider the consumer's personal values to the extent known.
- (7) An advance directive may include the individual's nomination of a court-appointed guardian.
- (8) A health care facility shall honor an advance directive that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that advance directive is in compliance with the laws of Tennessee or the state of the consumer's residence.
- (9) No health care provider or institution shall require the execution or revocation of an advance directive as a condition for being insured for, or receiving, health care.
- (10) Any living will, durable power of attorney for health care, or other instrument signed by the individual, complying with Tennessee Code Annotated, Title 32, Chapter 11, and a durable power of attorney for health care complying with the terms of Tennessee Code Annotated, Title 34, Chapter 6, Part 2, shall remain in effect. Any advance directive that does not comply with prior statutes as referenced above but complies with the Health Care Decisions Act (T.C.A. § 68-11-1701) may be treated as an advance directive.
- (11) A consumer having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

- (12) A consumer having capacity may revoke all or part of an advance directive, other than the designation of a surrogate or health care decision-maker, at any time and in any manner that communicates an intent to revoke.
- (13) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in an advance directive.
- (14) An advance directive that conflicts with an earlier advance directive revokes the earlier directive to the extent of the conflict.
- (15) Surrogates.
 - (a) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. The designation may be oral or written.
 - (b) A surrogate may make a health care decision for a consumer who is an adult or emancipated minor if and only if:
 - 1. the consumer has been determined by the designated physician to lack capacity, and
 - 2. no surrogate or guardian has been appointed, or
 - 3. the surrogate or guardian is not reasonably available.
 - (c) In the case of a consumer who lacks capacity, the consumer's surrogate shall be identified by the supervising health care provider and documented in the current clinical record of the facility at which the consumer is receiving health care.
 - (d) The consumer's surrogate shall be an adult who has exhibited special care and concern for the consumer, who is familiar with the consumer's personal values, who is reasonably available, and who is willing to serve.
 - (e) Consideration may be given in order of descending preference for service as a surrogate to:
 - 1. the consumer's spouse, unless legally separated;
 - 2. the consumer's adult child;
 - 3. the consumer's parent;
 - 4. the consumer's adult sibling;
 - 5. any other adult relative of the consumer; or
 - 6. any other adult who satisfies the requirements of 1200-8-34-.13(15)(d).
 - (f) No person who is the subject of a protective order or other court order that directs that person to avoid contact with the consumer shall be eligible to serve as the consumer's surrogate.
 - (g) The following criteria shall be considered in the determination of the person best qualified to serve as the surrogate:

1. Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the consumer or in accordance with the consumer's best interests;
 2. The proposed surrogate's regular contact with the consumer prior to and during the incapacitating illness;
 3. The proposed surrogate's demonstrated care and concern;
 4. The proposed surrogate's availability to visit the consumer during his or her illness; and
 5. The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process.
- (h) If none of the individuals eligible to act as a surrogate under 1200-8-34-.13(15)(c) thru 1200-8-34-.13(15)(g) is reasonably available, the designated physician may make health care decisions for the consumer after the designated physician either:
1. Consults with and obtains the recommendations of a facility's ethics mechanism or standing committee in the facility that evaluates health care issues; or
 2. Obtains concurrence from a second physician who is not directly involved in the consumer's health care, does not serve in a capacity of decision-making, influence, or responsibility over the designated physician, and is not under the designated physician's decision-making, influence, or responsibility.
- (i) In the event of a challenge, there shall be a rebuttable presumption that the selection of the surrogate was valid. Any person who challenges the selection shall have the burden of proving the invalidity of that selection.
- (j) A surrogate who has not been designated by the consumer may make all health care decisions for the consumer that the consumer could make on the consumer's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a consumer upon a decision of the surrogate only when the designated physician and a second independent physician certify in the consumer's current clinical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the consumer is highly unlikely to regain capacity to make medical decisions.
- (k) Except as provided in 1200-8-34-.13(15)(l):
1. Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care facility nor an employee of an operator of a health care facility may be designated as a surrogate; and
 2. A health care provider or employee of a health care provider may not act as a surrogate if the health care provider becomes the consumer's treating health care provider.
- (l) An employee of the treating health care provider or an employee of an operator of a health care facility may be designated as a surrogate if:
1. the employee so designated is a relative of the consumer by blood, marriage, or adoption; and

2. the other requirements of this section are satisfied.
- (m) A health care provider may require an individual claiming the right to act as surrogate for a consumer to provide written documentation stating facts and circumstances reasonably sufficient to establish the claimed authority.
- (16) Guardian.
 - (a) A guardian shall comply with the consumer's individual instructions and may not revoke the consumer's advance directive absent a court order.
 - (b) Absent a court order, a health care decision of an agent takes precedence over that of a guardian.
 - (17) A designated physician who makes or is informed of a determination that a consumer lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of a health care decision-maker, guardian, or surrogate, shall promptly record the determination in the consumer's current clinical record and communicate the determination to the consumer, if possible, and to any person then authorized to make health care decisions for the consumer.
 - (18) Except as provided in 1200-8-34-.13(19) thru 1200-8-34-.13(21), a health care provider or institution providing care to a consumer shall:
 - (a) comply with an individual instruction of the consumer and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the consumer; and
 - (b) comply with a health care decision for the consumer made by a person then authorized to make health care decisions for the consumer to the same extent as if the decision had been made by the consumer while having capacity.
 - (19) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.
 - (20) A health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision:
 - (a) is contrary to a policy of the facility which is based on reasons of conscience, and
 - (b) the policy was timely communicated to the consumer or to a person then authorized to make health care decisions for the consumer.
 - (21) A health care provider or facility may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards applicable to the health care provider or facility.
 - (22) A health care provider or facility that declines to comply with an individual instruction or health care decision pursuant to 1200-8-34-.13(19) thru 1200-8-34-.13(21) shall:
 - (a) promptly so inform the consumer, if possible, and any person then authorized to make health care decisions for the consumer;

- (b) provide continuing care to the consumer until a transfer can be effected or until the determination has been made that transfer cannot be effected;
 - (c) unless the consumer or person then authorized to make health care decisions for the consumer refuses assistance, immediately make all reasonable efforts to assist in the transfer of the consumer to another health care provider or facility that is willing to comply with the instruction or decision; and
 - (d) if a transfer cannot be effected, the health care provider or facility shall not be compelled to comply.
- (23) Unless otherwise specified in an advance directive, a person then authorized to make health care decisions for a consumer has the same rights as the consumer to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
- (24) A health care provider or facility acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or facility is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision of a person apparently having authority to make a health care decision for a consumer, including a decision to withhold or withdraw health care;
 - (b) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or
 - (c) complying with an advance directive and assuming that the directive was valid when made and has not been revoked or terminated.
- (25) An individual acting as health care decision-maker or surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
- (26) A person identifying a surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for such identification made in good faith.
- (27) A copy of a written advance directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
- (28) The withholding or withdrawal of medical care from a consumer in accordance with the provisions of Tennessee Health Care Decisions Act shall not, for any purpose, constitute a suicide, euthanasia, homicide, mercy killing, or assisted suicide.
- (29) Do Not Resuscitate (DNR).
- (a) A universal do not resuscitate order (DNR) may be issued by a physician for his patient with whom he has a physician/patient relationship, but only:
 - 1. with the consent of the patient; or
 - 2. if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for a DNR order, upon the request and consent of the person authorized to act on the patient's behalf under the Tennessee Health Care Decisions Act; or

3. if one (1) and two (2) cannot be met the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.
- (b) If the consumer is an adult who is capable of making an informed decision, the consumer's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke a universal do not resuscitate order. If the consumer is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the consumer be resuscitated by the person authorized to consent on the consumer's behalf shall revoke a universal do not resuscitate order.
 - (c) Universal do not resuscitate orders shall remain valid and in effect until revoked. Qualified emergency medical services personnel, and licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow universal do not resuscitate orders.
 - (d) Nothing in these rules shall authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.
 - (e) If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer. The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the consumer in transport to the receiving health care facility. Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the consumer's record.
 - (f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a universal do not resuscitate order, not to resuscitate a consumer in the event of cardiac or respiratory arrest in accordance with accepted medical practices.
 - (g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-224, 68-11-1703, 68-11-1704, 68-11-1706 through 68-11-1710, 68-11-1713, and 68-11-1714.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of August, 2004.
(08-54)

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

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 2nd Floor BoardRoom, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CST on October 19, 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, at 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, telephone number (615) 313-4731.

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

**CHAPTER 1240-1-2
FAMILY ASSISTANCE UNIT
FOOD STAMP PROGRAM**

AMENDMENTS

Rule 1240-1-2-.02 Household Concept – Food Stamps Only, is amended by deleting Part 5 under Subparagraph (a) Paragraph (1), and by substituting the following language, so that, as amended, Part 5 Paragraph (1), Subparagraph (a) shall read as follows:

5. An individual who is sixty (60) years of age or older (and the spouse of such individual) who lives with others and who is unable to purchase and prepare meals separately because he/she suffers from a disability considered permanent under the Social Security Act or some other non-disease-related severe permanent disability. In order for this individual and spouse to be eligible for separate household status, the combined gross income of all others with whom the individual resides (excluding the individual and his/her spouse's income) cannot exceed one hundred sixty five percent (165%) of the poverty level as shown in the Table below:

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
165% of Poverty	1281	1718	2155	2592	3030	3467	3904	4341	4779	5217

Add \$438 for each additional person

Authority: T.C.A. §§4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105 and 71-5-304; 7 U.S.C.A. § 2014; and 7 C.F.R. §§ 273.1, 273.1(b)(2), 273.9, and 273.10.

**CHAPTER 1240-1-4
FINANCIAL ELIGIBILITY REQUIREMENTS
AMENDMENTS**

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table I under Paragraph (1) Subparagraph (a) Part 2 in its entirety, and by inserting a new Table I, so that, as amended, Table I shall read as follows:

Table I

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1009	1354	1698	2043	2387	2732	3076	3421	3766	4111

No. of Persons in Household	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	4456	4801	5146	5491	5836	6181	6526	6871	7216	7561

For each additional member add \$345

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table II under Paragraph (1) Subparagraph (b) Part 2 in its entirety, and by inserting a new Table II, so that, as amended, Table II shall read as follows:

Table II

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Maximum Net Income	776	1041	1306	1571	1836	2101	2366	2631	2896	3161

No. of Persons in Household	11	12	13	14	15	16	17	18	19	20
Maximum Net Income	3426	3691	3956	4221	4486	4751	5016	5281	5546	5811

For each additional member add \$265

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table III under Paragraph (1) Subparagraph (c) Part 2 in its entirety, and by inserting a new Table III, so that, as amended, Table III shall read as follows:

Table III

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Maximum Coupon Allotment	149	274	393	499	592	711	786	898	1010	1122

No. of Persons in Household	11	12	13	14	15	16	17	18	19	20
Maximum Coupon Allotment	1234	1346	1458	1570	1682	1794	1906	2018	2130	2242

For each additional member add \$112

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table IV-A and Table IV-B under Paragraph (1) Subparagraph (d) in their entirety, and by inserting a new Table IV-A and Table IV-B, so that, as amended, Table IV-A and Table IV-B shall read as follows:

Table IV-A
Standard Deduction

Household Size	1	2	3	4	5	6+
Standard Deduction	134	134	134	134	153	175

Table IV-B
Food Stamp Deductions

Maximum Dependent Care for Child Less than 2 Years of Age	\$200
Maximum Dependent Care for Child Over Age 2 or Adult	\$175
Maximum Shelter Deduction for Non-Elderly/Disabled Households	\$388
Maximum Shelter Deduction for Elderly/ Disabled Households	No Maximum

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105 and 71-5-304; 7 U.S.C.A. § 2014; and 7 C.F.R. §§ 273.9 and 273.10.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of August, 2004. (08-64)

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

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of new rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 2nd Floor BoardRoom, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 2:30 p.m. CST on October 19, 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, at 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, telephone number (615) 313-4731.

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

**CHAPTER 1240-1-9
TRANSITIONAL FOOD STAMP ELIGIBILITY**

NEW RULES

Chapter 1240-1-9 Reserved for Future Use, is amended to designate the Chapter as "Transitional Food Stamp Eligibility" and by adding the following new rule sections, so that, as amended, the new Chapter shall read as follows:

**CHAPTER 1240-1-9
TRANSITIONAL FOOD STAMP ELIGIBILITY**

TABLE OF CONTENTS

1240-1-9-.01	Eligibility Requirements	1240-1-9-.03	Changes
1240-1-9-.02	Determining the Transitional Food Stamp Benefit	1240-1-9-.04	Re-certification for Regular Food Stamp Benefits
		1240-1-9-.05	Ending Transitional Food Stamp Benefits

1240-1-9-.01 ELIGIBILITY REQUIREMENTS

- (1) A Families First group with earnings whose case is closed because their income exceeds the Families First income standards may be eligible for five (5) months of Transitional Food Stamps (TFS) if they are part of a currently certified food stamp case.
 - (a) The Families First closure may be because of new or increased earnings, or because another circumstance occurred in the case which caused existing earnings (with or without other income) to exceed the Families First income standard.

- (2) Transitional benefits begin the first month following closure of the Families First case, or as soon as is administratively feasible, and continue for a maximum of five (5) months.
- (3) A household member who leaves the Transitional Food Stamp household during receipt of TFS benefits must re-apply for regular food stamp benefits in order to re-gain food stamp eligibility. He/she may not continue to receive Transitional Food Stamp benefits in a separate household.
- (4) Transitional benefits continue throughout the five-month period unless the household re-applies and is approved for Families First or re-applies for regular food stamp benefits.
- (5) Only eligible food stamp household members are eligible for Transitional Food Stamps; i.e., ineligible or disqualified individuals are not eligible for TFS.
- (6) All food stamp household members do not have to have been receiving Families First to be eligible for transitional benefits. However, if there is an open Families First case remaining within the food stamp household, the food stamp household is not eligible for Transitional Food Stamps.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-154 and 71-5-304; 7 C.F.R. § 273.12(f)(4); 7 U.S.C.A. §§ 2012(c), 2015(c) and 2020(s); 42 U.S.C.A. § 601 et seq.; P. L. 107-171 § 4115; and 69 Federal Register 20724 and 20728, April 16, 2004.

1240-1-9-02 DETERMINING THE TRANSITIONAL FOOD STAMP BENEFIT

- (1) Determine the Transitional Food Stamp allotment by using the earned and unearned income that was in the food stamp budget prior to Families First closure and removing the Families First grant from the computation.
- (2) Assign the household a new certification period that conforms with the five-month transitional period.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-154 and 71-5-304; 7 C.F.R. § 273.12(f)(4); 7 U.S.C.A. §§ 2012(c), 2015(c) and 2020(s); 42 U.S.C.A. § 601 et seq.; P. L. 107-171 § 4115; and 69 Federal Register 20724 and 20728, April 16, 2004.

1240-1-9-.03 CHANGES

- (1) A Transitional Food Stamp household is not required to report changes during the five-month period unless a household member leaves the household and applies for food stamps in another household.
- (2) The TFS household may apply to be re-certified for the regular Food Stamp Program at any time while receiving Transitional Food Stamps.
- (3) A TFS household that wishes to increase the level of food stamp benefits because of changes that have occurred must re-apply for re-certification through the regular Food Stamp Program. This includes changes such as an increase or decrease in household size or loss of earnings or other income.
- (4) The Transitional Food Stamp household is not required to report any changes in household circumstances to the worker during the five (5) months of TFS.
 - (a) No action should be taken on the Transitional Food Stamp case unless the recipient requests case closure or re-applies for food stamps in the regular program and is approved, or applies for Families First and is approved.

- (b) Any reported change would be applied to the regular food stamp benefits following the TFS period, when a new food stamp certification period is authorized.
- (c) If a household member is disqualified for an Intentional Program Violation during the TFS period, the disqualification must be imposed on the individual and the benefits adjusted accordingly.
- (d) Allotment reduction must be applied if a claim is established.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-154 and 71-5-304; 7 C.F.R. § 273.12(f)(4) and 7 C.F.R. 273.18(g); 7 U.S.C.A. §§ 2012(c), 2015(c) and 2020(s); 42 U.S.C.A. § 601 et seq.; P.L. 107-171 § 4115; and 69 Federal Register 20724 and 20728, April 16, 2004.

1240-1-9-.04 RE-CERTIFICATION FOR REGULAR FOOD STAMP BENEFITS

- (1) A household may apply for the regular Food Stamp Program at any time during the TFS period.
 - (a) If a household applies for re-certification during the transitional period but does not follow through with the application or is determined to be ineligible for the regular Food Stamp Program, transitional benefits should be continued for the remainder of the five-month period.
 - 1. If the household applies for regular benefits during the transitional period and is determined eligible but is entitled to a benefit amount lower than its transitional benefit, the household should be encouraged to withdraw its application and continue to receive transitional benefits.
 - 2. If the household chooses not to withdraw its application, the re-certification process should be completed and the lower benefit authorized beginning with the first month of the new certification period.
 - (b) If the household applies for the regular Food Stamp Program and is found eligible for benefits higher than its transitional benefits and the TFS benefits have already been issued for the first month of regular Food Stamp eligibility, the worker should authorize the approval and issue the household a supplement for the difference.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-154 and 71-5-304; 7 C.F.R. § 273.12(f)(4); 7 U.S.C.A. §§ 2012(c), 2015(c) and 2020(s); 42 U.S.C.A. § 601 et seq.; P.L. 107-171 § 4115; and 69 Federal Register 20724 and 20728, April 16, 2004.

1240-1-9-.05 ENDING TRANSITIONAL FOOD STAMP BENEFITS

- (1) Transitional Food Stamp households will be sent an appointment notice for re-certification the month before the end of the five-month certification period.
- (2) If a household does not respond to the appointment notice, the TFS certification will expire and the case will be automatically closed.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-154 and 71-5-304; C.F.R. § 273.12(f)(4); 7 U.S.C.A. §§ 2012(c), 2015(c) and 2020(s); 42 U.S.C.A. § 601 et seq.; P.L. 107-171 § 4115; and 69 Federal Register 20724 and 20728, April 16, 2004.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of August, 2004.
(65)

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BOARD OF OSTEOPATHIC EXAMINATION - 1050

There will be a hearing before the Tennessee Board of Osteopathic Examination to consider the promulgation of an amendment to a rule and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-201, 63-9-101, 63-6-701 through 707, Public Chapter 579 of the Public Acts of 2004, and Public Chapter 678 of the Public Acts of 2004. 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 1st day of November, 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

AMENDMENT

Rule 1050-2-.13 Specially Regulated Areas and Aspects of Medical Practice, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (4) The physician's signature is required as the official certifying act of the physician on all written prescriptions. Physicians may utilize a legible and specifically identifying electronic signature to satisfy the requirements of this rule and as the official certifying act of the physician.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-9-101, and Public Chapter 678 of the Public Acts of 2004.

NEW RULE

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1050-2-.20 Free Health Clinic and Volunteer Practice Requirements

1050-2-.20 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any osteopathic physician licensed to practice osteopathy in this state or any other state who has not been disciplined by any osteopathic and/or medical licensure board may have their license converted to or receive a Tennessee “Special Volunteer License,” as defined in T.C.A. § 63-1-201, which will entitle the licensee to practice without remuneration solely within a “free health clinic,” as defined by T.C.A. § 63-1-201, at a specified site or setting by doing the following:
 1. Obtaining from the Board’s administrative office a “Special Volunteer License” application, completing it and submitting it along with any required documentation to the Board’s administrative office; and
 2. Have the licensing authority of every state in which the osteopathic physician holds or ever held a license to practice osteopathy submit directly to the Board’s administrative office the equivalent of a “certificate of fitness” as described in T.C.A. § 63-1-118 which shows that the license has never been subjected to any disciplinary action and is free and clear of all encumbrances; and
 3. For osteopathic physicians who have not been licensed in Tennessee, comply with all provisions of subparagraphs (1) (b), (1) (e), (1) (f) and (1) (i) of rule 1050-2-.03 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 4. Submitting the specific location of the site or setting of the free health clinic in which the licensee intends to practice along with proof of the clinic’s private, and not-for-profit status.
 - (b) An osteopathic physician holding a Special Volunteer License is not required to pay any fee for its issuance or the required biennial renewal pursuant to the Division of Health Related Board’s biennial birthdate renewal system
 - (c) An osteopathic physician holding a Special Volunteer License may not do any of the following:
 1. Practice osteopathy anywhere other than in the free health clinic site or setting specified in the application; and
 2. Charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal benefit programs for the provision of osteopathic or any other services; and
 3. Practice for any free health clinic that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.
 - (d) Special Volunteer Licenses are subject to all of the following
 1. All rules governing renewal, retirement, reinstatement and reactivation as provided by rules 1050-2-.07 and .08, except those requiring the payment of any fees; and

2. The rules governing continuing osteopathic education as provided by rule 1050-2-.12; and
 3. Disciplinary action for the same causes and pursuant to the same procedures as all other licenses issued by the Board.
- (2) Practice Pursuant to the “Volunteer Health Care Services Act” T.C.A. §§ 63-6-701, et seq.
- (a) Any osteopathic physician licensed in this or any other state, territory, district or possession of the United States whose license is not under a disciplinary order of suspension or revocation may practice osteopathy in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (b) Any person who may lawfully practice osteopathy in this or any other state, territory, district or possession of the United States under an exemption from licensure and who is not under a disciplinary order of suspension or revocation and who is not and will not “regularly practice,” as defined by T.C.A. § 63-6-703 (3) may practice osteopathy in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (c) An osteopathic physician or anyone who practices under an exemption from osteopathic licensure pursuant to this rule may not charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal benefit programs for the provision of osteopathic or any other services; and may not practice for any organization that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.
 - (d) Any organization that organizes or arranges for the voluntary provision of health care services on residents of Tennessee may utilize persons described in subparagraphs (a) and (b) to practice osteopathy only when it has complied with the provisions of T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
- (4) At the Board’s discretion, submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS or other Board approved credentialing service to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).
- (5) Application review and licensure decisions for these types of osteopathic licensure or organization registration shall be governed by rule 1050-2-.05.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-201, 63-9-101, 63-6-701 through 707, and Public Chapter 579 of the Public Acts of 2004.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of August, 2004.
(08-66)

BOARD OF REGISTRATION IN PODIATRY - 1155

There will be a hearing before the Tennessee Board of Registration in Podiatry to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-3-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 15th day of December, 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 1155-2-.02, Scope of Practice, is amended by adding the following language as paragraph (4):

- (4) A licensed podiatrist may order diagnostic tests from licensed medical laboratories and may receive results of such tests, provided the need for such tests is relevant to the practice of podiatry.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-101, and 63-3-106.

Rule 1155-2-.04, Qualifications for Licensure, is amended by deleting subparagraph (1) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (f) shall read:

- (1) (f) Successfully complete the jurisprudence examination pursuant to rule 1155-2-08.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-106, 63-6-109, and 63-6-111.

Rule 1155-2-.08, Examinations, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (5) (b) and renumbering the remaining subparagraphs accordingly, so that as amended, the new paragraph (3) and the new subparagraph (5) (b) shall read:

- (3) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
 - (a) The Board shall include a jurisprudence examination with all applications for licensure that are mailed from the Board's administrative office, or the applicant may obtain the jurisprudence

examination from the Board's Internet web page that can be accessed at www.Tennessee.gov/health.

- (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is returned to the Board's administrative office.
 - (c) There is no fee for the jurisprudence examination.
 - (d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of podiatry (T.C.A. §§ 68-3-101, et seq., and Chapter 1155-2 of the Official Compilation, Rules and Regulations of the State of Tennessee) and the American Podiatric Medical Association (APMA) Code of Ethics. Copies of the applicable statutes, regulations, and the APMA Code of Ethics are available upon request from the Board's administrative office.
 - (e) The format of the examination shall be "open-book."
 - (f) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.
- (5) (b) Applicants who fail to successfully complete the jurisprudence examination must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-106, 63-6-109, and 63-6-111.

Rule 1155-2-.12, Continuing Education, 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) (a) Twelve (12) hours of the fifteen (15) clock hour requirement shall be clinical, scientific, or related to patient care. If the licensee is performing ankle surgery pursuant to T.C.A. § 63-1-101 (b) (1), ten (10) of these twelve (12) hours shall pertain to the ankle surgery.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-101, 63-3-106, 63-6-116, and Public Chapter 668 of the Public Acts of 2004.

NEW RULE

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1155-2-.21 Advertising

1155-2-.21 ADVERTISING.

- (1) Definitions
 - (a) Licensee - Any person holding a license to practice podiatry in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.

- (b) **Material Fact** - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of podiatrists to serve his or her particular needs.
 - (c) **Bait and Switch Advertising** - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
 - (d) **Discounted Fee** - Shall mean a fee offered or charged by a person or product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".
- (2) **Advertising Fees and Services**
- (a) **Fixed Fees**
 - 1. Fixed fees may be advertised for any service.
 - 2. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
 - (b) **Range of Fees.** A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee.
 - (c) **Discount Fees.** Discount fees may be advertised if:
 - 1. The discount fee is lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
 - (d) **Related Services and Additional Fees.** Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
 - (e) **Time Period of Advertised Fees.**
 - 1. Advertised fees shall be honored during the entire time period stated in the advertisement.
 - 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the advertisement's last date of publication or until the next scheduled publication, whichever is later.
- (3) **Advertising Content.** The following acts or omissions in the context of advertisement by any licensee shall constitute unethical and unprofessional conduct pursuant to Rule 1155-2-.13, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-6-119 (a) (16):

- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
- (b) The misleading use of an unearned or non-health degree in any advertisement.
- (c) Failure to include in the advertisement the terms “podiatrist” or “D.P.M.” along with the licensee’s name when the licensee is an individual, or failure to include in the advertisement that the profession pertaining to the services being offered is podiatry when the practitioner is a licensee.
- (d) Promotion of professional services which the licensee knows or should know is beyond the licensee’s ability to perform.
- (e) Any appeals to an individual’s anxiety in an excessive or unfair manner.
- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of podiatric procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) The use of “bait and switch” advertisements.
- (n) Misrepresentation of a licensee’s credentials, training, experience, or ability.
- (o) Failure to include the corporation, partnership or individual licensee’s name, address, and telephone number in any advertisement.

- (p) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This subparagraph shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (q) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (r) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (4) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
 - (c) A recording and/or copy of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast, posting or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the applicability or invalidity of any section, clause, sentence or part in any instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-3-106, and 63-3-119.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of August, 2004.
(08-59)

TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 11 a.m. (central) on the 8th day of November, 2004.

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

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

SUBSTANCE OF PROPOSED RULE

CHAPTER 1220-4-10

RULES FOR COLLECTING CONTRIBUTIONS FROM TELECOMMUNICATIONS PROVIDERS AND DISTRIBUTING ASSISTIVE TELECOMMUNICATIONS EQUIPMENT TO THE QUALIFIED INDIVIDUALS WITH DISABILITIES

Tennessee Regulatory Authority Rule 1220-4-10, as amended, shall read:

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1220-4-10-.01 Definitions	1220-4-10-.06 Maintenance and Repair
1220-4-10-.02 Contributions of Providers	1220-4-10-.07 Monthly Telephone Charges
1220-4-10-.03 Collection of Contributions	1220-4-10-.08 Confidentiality of Information and Nondiscriminatory Statement
1220-4-10-.04 Minimum Eligibility Requirements	
1220-4-10-.05 Purchase and Distribution of Assistive Communication Devices	

1220-4-10-.01 DEFINITIONS

- (1) "Act" refers to Tenn. Code Ann. § 65-21-115.
- (2) "Applicant" means a person who applies to the Tennessee Regulatory Authority for a device to assist with communication through the telephone network.
- (3) "Assistive Communications Device" means special equipment that permits individuals who have a disability to communicate effectively over the telephone network.
- (4) "Authority" means the Tennessee Regulatory Authority.
- (5) "Lifeline" means a telephone assistance program that reduces the monthly telephone charges for qualified persons.

- (6) "Link-up" means a telephone assistance program that reduces the non-recurring cost of installing telephone service for qualified persons.
- (7) "Provider" means a telecommunications service provider or a competing telecommunications provider as defined by Tenn. Code Ann. § 65-4-101 whose annual intra-state gross receipts are greater than five million dollars (\$5,000,000).
- (8) "Recipient" means the person whose application for an assistive communications device has been granted by the Authority.
- (9) "TDAP" refers to the Telecommunications Devices Access Program administered by the Tennessee Regulatory Authority.
- (10) "TDAP Coordinator" refers to the individual employed by the Authority to manage the TDAP Program.

Authority: *T.C.A. §§65-2-102 and 65-21-115.*

1220-4-10-.02 CONTRIBUTIONS OF PROVIDERS

- (1) All Telecommunications Service Providers and all Competing Telecommunications Service Providers (the Providers), as defined by Tenn. Code Ann. § 65-4-101 subsections (c) and (e), whose Tennessee intra-state gross receipts for the calendar year is more than five million dollars (\$5,000,000) shall make contributions to the Telecommunications Devices Access Program ("TDAP") established by Chapter 417 of the Public Acts of 1999 (the "Act"). Each Provider shall make such contributions in proportion to its share of the total intra-state gross receipts of all appropriate Providers for the most recent calendar year.
- (2) Monies collected for the TDAP will fund the purchase of assistive communication devices for Tennesseans with disabilities, and other equipment that may be necessary to implement the Act, and in addition, cover the necessary administrative costs, to include outreach activities, of the Authority to administer the Program.
- (3) For the purposes of this Rule Chapter, the intra-state gross receipts of the Providers shall be those reported on Form UD 16 "Statement of Gross Earnings and Computation of Inspection Fee" filed with the Authority on or before April 1 of each year.
- (4) On or before May 1 of each year, the Authority shall calculate a contribution factor to apply to the intra-state gross receipts of each Provider to generate total contributions of no more than seven hundred and fifty thousand dollars (\$750,000) per year from all Providers including minimum contributions.
- (5) The Authority shall create a reserve fund for the Program that will not exceed one million dollars (\$1,000,000) within any given year.
- (6) Pursuant to the provisions of the Act, the Providers are prohibited from line itemizing on its end-users telephone bills any prorata contribution of the provider's contributions to the TDAP.
- (7) Contributions by Providers to the TDAP are not recoverable from the Authority's Universal Service Fund.

Authority: *T.C.A. §§65-2-102 and 65-21-115.*

1220-4-10-.03 COLLECTION OF CONTRIBUTIONS

- (1) Forms designed by the Authority for the remittance of contributions to the Program shall be mailed to each Provider by May 15 of each year. Each Provider shall submit its contribution to the Authority by June 15 of each year.
- (2) Providers failing to submit contributions, or submitting late, may be subject to penalties under Tenn. Code Ann. §§65-3-119, 65-4-116, and 65-4-120.
- (3) Contributions when collected shall be deposited in the state treasury in the special fund created for the TDAP Program.

Authority: T.C.A. §§65-2-102 and 65-21-115.

1220-4-10-.04 MINIMUM ELIGIBILITY REQUIREMENTS

- (1) All applicants must be residents of The State of Tennessee.
- (2) Applicants shall have a disability, as verified by a care giver licensed to practice in the state of Tennessee, such that the person cannot use the telephone effectively without the use of an assistive communication device.
- (3) Only one assistive communication device per household will be awarded through the TDAP unless there are persons in the same household with different adaptive needs. The Program Coordinator may then determine the need for more than one assistive communication device.
- (4) Because the demand for assistive communication devices may exceed the supply, the Authority will award the assistive communication devices on a first come basis. Priority, however, will be given to those applicants with the greatest physical and financial and/or social need. Such factors as described below shall be used to evaluate an applicant's physical, financial and social need for the assistive communication devices:
 - (a) The receiving of federal or state public assistance (i.e., Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Housing/Section 8 or Low Income Heating, etc.);
 - (b) Applicants whose total gross family income is less than 125 percent of the Federal Poverty Guidelines;
 - (c) The presence of any serious physical, medical, and/or cognitive condition, as verified by a care giver licensed to practice in Tennessee, that may present a life threatening situation (i.e., heart condition, stroke, severe depression, epilepsy, etc.);
 - (d) An eligible applicant living alone;
 - (e) Applicants who are under the age of 18 years who are able to use assistive communication devices for at least emergency purposes and who are frequently left in charge of the household or alone;
 - (f) A living situation where there is more than one person requiring an assistive communication device;

- (g) Other unique circumstances deserving of special consideration that do not meet the above factors; and
 - (h) Applicants who meet the federal and/or state qualifications for the Lifeline and Link-up Telephone Assistance Programs.
- (5) The Authority may request all necessary documentation needed to confirm information provided by applicants. This information could include but not be limited to doctor statements, copies of the applicant's federal income tax returns, evidence of public assistance eligibility and any other information needed to ensure the applicant meets the requirements as specified in the Act and this Rule Chapter.
 - (6) Applicants must confirm in their application their ability to utilize an assistive communication device effectively. For those applicants that are not qualified in the use of such equipment, the TDAP Program Coordinator will provide applicants with information about qualified training.
 - (7) The Authority shall furnish application forms to be completed by the applicant or his/her authorized representative.

Authority: *T.C.A. §§65-2-102 and 65-21-115.*

1220-4-10-.05 PURCHASE AND DISTRIBUTION OF ASSISTIVE DEVICES

- (1) The Authority will purchase assistive communication devices under a state contract.
- (2) The TDAP Coordinator shall evaluate applications for assistive communication devices and shall award such equipment only to those applicants who meet the requisite requirements listed in this Rule Chapter. Applicants who fail to qualify shall be notified by U.S. Registered Mail of the reasons for denial. The notification shall also describe the appeal process of the decision.
- (3) Assistive communication devices awarded to qualified applicants are available for their exclusive use as long as they meet the Minimum Eligibility Requirements listed in 1220-4-10-.04.
- (4) The recipient must return the assistive communication devices if any of the following conditions occur:
 - (a) The recipient moves from the state;
 - (b) The recipient loses telephone service permanently;
 - (c) The recipient abuses the assistive communication device;
 - (d) The recipient is found to be using the device for illegal purposes;
 - (e) The recipient no longer requires the device.
- (5) Equipment may be exchanged if a different device becomes necessary because of a change in access needs.
- (6) Stolen or damaged equipment may be replaced. The applicant must provide copies of the appropriate documentation, such as fire department and/or police department reports.
- (7) All contested issues arising from the application of these rules will be determined under Tenn. Code Ann. § 4-5-301 and § 65-2-101 et seq.

Authority: T.C.A. §§65-2-102 and 65-21-115.

1220-4-10-.06 MAINTENANCE AND REPAIR

- (1) If the assistive communication device is in need of repair, the recipient shall notify the Authority to determine if loaner equipment is available and whether he/she qualifies for the equipment.
 - (a) Recipients will not qualify for a loaner device if it is determined that the original device was damaged as the result of negligence or abuse.
 - (b) In order to qualify for loaner equipment, Recipients shall provide evidence that they will pay for the repair cost of their assistive communication device or contact the TDAP Coordinator to apply for repair assistance.
- (2) The Authority shall maintain a list of locations where assistive communication devices can be repaired. The Authority shall make the final determination as to where the assistive communication devices are repaired.
- (3) It is the responsibility of the recipient to return the assistive communication devices to the repair center, as designated by the Authority, for repair. The cost of the repair, and/or coordination with the TDAP Coordinator, shall be the responsibility of the recipient special consideration will be given for repair cost by the Authority for recipients who have special financial needs as listed in 1220-4-10-.04 (4a-h).
- (4) It is the responsibility of the recipient to purchase miscellaneous items, such as paper rolls, for the operation of the assistive communication devices.

Authority: T.C.A. §§65-2-102 and 65-21-115.

1220-4-10-.07 MONTHLY TELEPHONE CHARGES

- (1) The recipient is responsible for all charges for local and long distance telephone service and any other service charges from the telephone company.

Authority: T.C.A. §§65-2-102 and 65-21-115.

1220-4-10-.08 CONFIDENTIALITY OF INFORMATION AND NONDISCRIMINATORY STATEMENT

- (1) All information obtained by the Authority from applicants shall be kept confidential and will not be released to any person or entity without the expressed approval of the applicant unless for the purposes of reports or audits are required under state law.
- (2) Services for the TDAP are provided on a nondiscriminatory basis in compliance with Title VI of the Civil Rights Act of 1964, as amended, Section 602 of the Individuals with Disabilities Education

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2004.
(08-85)

TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 9 a.m. (central) on the 9th day of November, 2004.

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

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

SUBSTANCE OF PROPOSED RULE

CHAPTER 1220-4-11 TELEPHONE SOLICITATION REGULATIONS - DO NOT CALL REGISTER

Tennessee Regulatory Authority Rule 1220-4-11, as amended, shall read:

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1220-4-11-.01 DEFINITIONS

- (1) "Act" refers to T.C.A. § 65-4-401 et seq.
- (2) "ADAD" or "automatic dialing and announcing device" means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed.
- (3) "Affiliate" of a specific person means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (4) "Authority" means the Tennessee Regulatory Authority.
- (5) "Business Telephone Subscriber" means a person or company who has subscribed to a business telephone service from a local exchange carrier.

- (6) “Caller identification service” or “caller ID” means telephone service that notifies telephone subscribers of the telephone number of incoming telephone calls.
- (7) “Coordinator” refers to the individual employed by the Authority to oversee the regulation of telephone solicitation practices, including the operations of the Do Not Call Register, delegated to the Authority by the General Assembly in T.C.A. §§ 65-4-401 and 47-18-1501.
- (8) “Database” means the information from which the Authority compiles the Do Not Call Register. The database shall be maintained by the Authority, or its designee, for the purpose of fulfilling the requirements of T.C.A. § 65-4-401.
- (9) “Division” refers to the Consumer Services Division of the Tennessee Regulatory Authority.
- (10) “Do Not Call Register” means a list of telephone numbers of residential telephone subscribers who have properly enrolled with the Authority or a Federal agency, that their telephone numbers not be solicited by telephone solicitors.
- (11) “Existing customer” includes a residential telephone subscriber with whom the person or entity making a telephone solicitation has had a business relationship within the prior twelve (12) months.
- (12) “Interexchange carrier” means a company that is certificated by the Authority to provide long distance toll telephone service.
- (13) “Local exchange companies,” as used in this Chapter, includes telecommunications service providers and competing telecommunications service providers as defined in Tenn. Code Ann. § 65-4-101, as well as telephone cooperatives and cellular or other wireless telecommunications providers operating in Tennessee.
- (14) “Not-for-profit” means an organization that is exempt from paying taxes under Section 501(c) of the Internal Revenue Code.
- (15) “Parent” means a company owning more than fifty (50) percent of the voting shares, or otherwise a controlling interest, of another company.
- (16) “Residential Telephone Subscriber” means a person residing in Tennessee who has residential telephone service.
- (17) “Subsidiary” means a corporation more than fifty percent (50%) of whose outstanding voting shares are owned by its parent and/or the parent’s other Subsidiaries.
- (18) “Telephone solicitor” means any natural person, firm, organization, partnership, association or corporation, or a parent, subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephone solicitation, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.
 - (a) “Registrant” means a telephone solicitor who has submitted an application and properly enrolled with the Authority to be provided the Do Not Call Register.
 - (b) “Principal Solicitor” means a telephone solicitor that enters into agreements with independent solicitors as defined herein for the purposes of providing telephone solicitation.

- (c) "Independent Solicitor" means a telephone solicitor, other than an affiliate, subsidiary or employee of a Registrant, who has entered into an agreement with one and only one principal solicitor, as defined herein, to perform telephone solicitation under the indirect supervision of the principal solicitor.
- (19) "Telephone solicitation" means any voice communication over a telephone, originating from Tennessee or elsewhere, for the purposes of encouraging the purchase or rental of, or investment in, property, goods, or services except as provided for below. "For the purposes of encouraging" includes any call made with the intent that the call will ultimately result in the purchase or rental of, or investment in, property, goods, or services. Such calls include, but are not limited to: calls to set appointments, interviews or consultations; to conduct a survey; or to offer a give-away. Telephone solicitation does not include:
- (a) any voice communication to any residential telephone subscriber with that subscriber's prior express invitation or permission;
1. An offer to sell or rent real or personal property does not constitute an express invitation or permission except for the sole purpose of purchasing or renting the property or unless (2) or (3) below applies;
 2. The use of a residential telephone line for the purpose of operating a business constitutes an express invitation or permission for the purposes of these rules;
 3. An express invitation or permission shall include the situation where a voice communication is made by a real estate broker to a residential telephone subscriber who (i) is offering to sell his/her real property without using the services of a real estate broker; or (ii) previously entered into a listing agreement with a real estate broker which has expired within six months of the voice communication.
- (b) any voice communication to a residential telephone subscriber if such communication is made on behalf of a not-for-profit organization exempt from paying taxes under the Internal Revenue Code § 501(c), provided that a bona fide member of the exempt organization makes such voice communication;
- (c) any voice communication to any residential telephone subscriber who is an existing customer; or
- (d) occasional and isolated voice communications to a residential telephone subscriber provided all the following conditions are met:
1. A direct employee of the business makes the voice communication;
 2. The communication is not made as part of a telecommunications marketing plan;
 3. The business has a reasonable belief that the specific person who is receiving the voice communication is considering purchasing the service or product sold or leased by the business and the call is specifically directed to such person;
 4. The business does not sell or engage in telephone solicitations; and
 5. The business does not make more than three (3) such voice communications in any one (1) calendar week.

Authority: T.C.A. §§4-5-201 et seq., 47-18-1501, 47-18-1526, 65-2-102, and 65-4-405.

1220-4-11-.02 GENERAL TELEPHONE SOLICITATION REGULATIONS

- (1) No telephone solicitor shall place a telephone call to a residential telephone subscriber at any time other than between the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party's location) without the residential telephone subscriber's prior express invitation or permission.
- (2) All telephone solicitors must institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of telephone solicitors in compliance with this Chapter.
- (3) All telephone solicitations to residential telephone subscribers shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents, and shall further meet the following requirements:
 - (a) Within the first twenty-five (25) seconds of the call and at the conclusion of the call, ADAD messages must clearly state the name and telephone number of the person or organization initiating the call. The telephone number given must be one that will be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the automated call.
 - (b) Live telephone solicitors must provide a telephone number that will be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the solicitation call.
- (4) Telephone solicitors are prohibited from knowingly using telephone equipment or telecommunications network elements to block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone equipment of the called party.
- (5) Local exchange companies and interexchange carriers are prohibited from knowingly providing any network element or service to telephone solicitors that is used to unlawfully block or otherwise interfere with, on a per line basis, the display of the telephone solicitor's name and telephone number the residential subscriber's caller ID equipment. If a local exchange company or interexchange carrier has knowledge that a telephone solicitor is in violation of subsection (4) of this rule, such company or carrier shall inform the Authority of such violation.
- (6) After notice and hearing, and upon finding that a telephone solicitor is in violation of this Chapter, the Authority may issue an order prohibiting local exchange companies and/or interexchange carriers from providing telecommunications service to such telephone solicitor.
- (7) Violations of this Chapter can result in civil actions prescribed by law, which include fines payable to the Authority.
- (8) Telephone solicitors must adhere to state and federal statutes regarding telephone solicitation practices, including, but not limited to, the Tennessee Consumer Protection Act.
- (9) After receipt of a complaint forwarded by the Authority, telephone solicitors shall, within ten (10) business days, file a written response with the Authority.

Authority: T.C.A. §§4-5-201 et seq., 47-18-1501, 47-18-1526, 65-2-102, 65-4-120, 65-4-405, and 65-4-405(h).

1220-4-11-.03 MAINTAINING THE TENNESSEE DO NOT CALL REGISTER

- (1) The Authority shall maintain a database of names, addresses and telephone numbers of all Tennessee residential telephone subscribers who have elected not to receive telephone solicitations.
- (2) The information contained in the database is not open to public inspection or disclosure as defined under Tennessee Code Annotated Title 10, Chapter 7. The Authority will take all necessary steps to protect the confidentiality of the information in the database.
- (3) The Authority shall include in its Register the list of Tennessee subscribers to the Federal Communications Commission's or any other Federal agencies' Do Not Call national database, if and when such list is established.
- (4) The Division will update the Register at the beginning of each month.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.04 TELEPHONE SOLICITOR'S ACCESS TO THE TENNESSEE DO NOT CALL REGISTER

- (1) It is the duty of any telephone solicitor engaging in the solicitation of Tennessee residential telephone subscribers to register with the Authority. Telephone solicitors shall submit an application in writing to the Authority. The application must contain, but shall not be limited to, the telephone solicitor's name, including aliases, trade names, and assumed names, address, telephone number and name of the agent for service of process along with a notarized statement from an officer of the company affirming the company will comply with the provisions of this Chapter.
- (2) A principal solicitor is permitted to share its copy of the Do Not Call Register with its independent solicitors under the following conditions:
 - (a) The principal solicitor submits in its application all the necessary information as required by the Division regarding its independent solicitors, including, but not limited to, verification that the independent solicitor will comply with the regulations of this Chapter;
 - (b) The principal solicitor and independent solicitor will be liable for any violations of these Rules or Tenn. Code Ann. § 65-4-401 et seq.;
 - (c) The principal solicitor assumes the responsibility of providing to each of its independent solicitors the most recent version of the Do Not Call Register; and
 - (d) The principal solicitor provides notice of the Do Not Call Register to each of its independent solicitors. The principal solicitor shall be able to produce its notice and proof of receipt of the notice by the independent solicitor upon request by the Authority. Such notice shall contain:
 1. A statement that any independent solicitor who chooses not to register under the principal solicitor's group registration must register as provided for in Rule 1220-4-11-.04(4)(c);

2. The most recent text of Chapter 1220-4-11 Telephone Solicitation Regulations - Do Not Call Register; and
 3. The most recent text of T.C.A. title 65, chapter 4, part 4, as amended.
- (3) Access to the following information will be provided to approved telephone solicitors:
- (a) The Do Not Call Register of telephone numbers of Tennessee residential telephone subscribers who have elected not to receive telephone solicitations.
 - (b) The Do Not Call Register shall be provided, with unlimited access, via the Internet or other electronic means to telephone solicitors. It is the duty of telephone solicitors to ensure they have the most recent version of the Do Not Call Register prior to soliciting residential telephone subscribers.
 - (c) Paper copies of the Do Not Call Register will be available to telephone solicitors at the current per page rate as set by the Tennessee secretary of state pursuant to Tenn. Code Ann. § 65-1-212.
- (4) Telephone solicitors doing business in the state and subject to the control and jurisdiction of this Chapter shall pay to the Authority, on or before May 1st of each year, an annual registration fee, which allows for unlimited electronic access to the Do Not Call Register. Such registration fee shall cover the time period from the following July 1st through June 30th of the following year or any part thereof.
- (a) Telephone solicitors shall pay a registration fee of \$500.00.
 - (b) Telephone solicitors who elect to register as a principal solicitor shall pay a group registration fee of \$500.00 and an additional \$50.00 registration fee for each independent solicitor.
 - (c) The \$50.00 registration fee for the independent solicitor may be waived if the principal solicitor, in a written document on file with the Authority, assumes responsibility for the independent solicitor's compliance with the Act.
 - (d) Independent solicitors who elect not to register under a principal solicitor's group registration shall pay a registration fee of \$500.00.

Authority: T.C.A. §§4-5-201 et seq., 65-2-102, and 65-4-405.

1220-4-11-.05 CONSUMER REGISTRATION WITH THE TENNESSEE DO NOT CALL REGISTER

- (1) The Authority shall establish and provide for the operation of a Register on which to compile a list of telephone numbers of residential telephone subscribers who object to receiving telephone solicitations. Such Register may be operated by the Authority or by another entity under contract with the Authority. Guidelines for the operation of the Register are described as follows:
 - (a) Residential telephone subscribers may enroll on the Register as prescribed by the Division. Enrollment on to the Register will become effective sixty (60) days following the first day of the succeeding month of enrollment by the subscriber.
 - (b) A residential telephone subscriber will remain in the "Do Not Call Register" for a period of five (5) years or until the subscriber requests that the Authority removes their name from the Register.

- (c) Business telephone subscribers may not be included on the Register.
- (d) The Coordinator may purge the Register periodically in order to ensure accuracy.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.06 PUBLIC EDUCATION ABOUT THE TENNESSEE DO NOT CALL REGISTER

- (1) Local exchange companies shall notify their residential subscribers twice a year on how to enroll on the Register. This notification shall accompany the subscriber's monthly telephone bill and shall be developed in cooperation with the Coordinator.
- (2) In addition to the notification required by subsection (1), local exchange companies, working in cooperation with the Division, are required to place information in their White Page telephone directory informing their residential telephone subscribers how to be included in the Register.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.07 VIOLATIONS OF THE TENNESSEE DO NOT CALL REGISTER

- (1) It is a violation of T.C.A. § 65-4-401 et seq. and this Chapter for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that is listed in a Do Not Call Register that was in effect sixty (60) days prior to the time of the telephone solicitation.
- (2) A principal solicitor and independent solicitor are liable for violations of this Chapter by the independent solicitor. Except, a principal solicitor shall not be liable for an independent solicitor's violations of this Chapter if:
 - (a) The principal solicitor provided the requisite notice to the independent solicitor pursuant to Rule 1220-4-.11-.04(2)(d) and
 - (b) The independent solicitor is not registered with the Authority or is registered pursuant to Rule 1220-4-11-.04(4)(c)
- (3) Violators of this Chapter are subject to a civil penalty, payable to the Authority, of an amount not to exceed Two-Thousand Dollars (\$2,000) for each violation. In addition, the Authority may seek additional relief in any court of competent jurisdiction.
- (4) It shall be a defense in any proceeding brought under this Chapter that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Chapter.
- (5) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.

Authority: T.C.A. §§4-5-201 et seq., 65-2-102, 65-4-120, 65-4-405, and 65-4-405(h).

1220-4-11-.08 ENFORCEMENT PROVISIONS

- (1) The Authority may, on its own motion, or the recommendation of the Division, or the motion of the Consumer Advocate Division, or any other interested person, order the investigation of the practices of any telephone solicitor conducting business in Tennessee. Such investigation shall determine if such telephone solicitor has violated Tenn. Code Ann. § 65-4-401, or this Chapter. If such investigation discloses a violation of state law or this Chapter, the Authority shall issue a show cause order with respect to such acts pursuant to T.C.A. §65-2-106.
- (2) Local exchange companies and interexchange carriers are required to fully cooperate with the Division in any investigation of an alleged violation of this Chapter.
- (3) If one or more of the term(s) or provision(s) of this Chapter or the applications thereof, to any extent, are held to be invalid or unenforceable, then the remainder of this Chapter shall not be affected thereby.

Authority: T.C.A. §§65-2-102 and 65-4-405.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2004. (08-86)

TENNESSEE REGULATORY AUTHORITY - 1220

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 10 a.m. (central) on the 9th day of November, 2004.

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

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

SUBSTANCE OF PROPOSED RULE**CHAPTER 1220-4-12
TELECOMMUNICATIONS RULE IMPLEMENTING
TOLL-FREE COUNTY WIDE CALLING**

Tennessee Regulatory Authority Rule 1220-4-12, shall read:

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1220-4-12-.01 Definitions	1220-4-12-.04 Database Administration
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1220-4-12-.01 DEFINITIONS

- (1) “Access charge” shall mean the charge for providing access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.
- (2) “Authority” refers to the Tennessee Regulatory Authority
- (3) “CLEC” shall mean competitive local exchange carrier or competing telecommunications service provider as defined in Tenn. Code Ann. § 65-4-101(e).
- (4) “County-wide or intra-county calls” shall mean any telephone call made between two (2) points in the same county in Tennessee.
- (5) “Database administrator” refers to the entity designated by the Authority to manage the Tax Area Rate database.
- (6) “ILEC” shall mean incumbent local exchange carrier as defined in Tenn. Code Ann. § 65-4-101(d).
- (7) “IXC” shall mean inter-exchange carrier as defined in Tenn. Code Ann. § 65-4-101(a)(9).
- (8) “Landline calls” shall mean calls transported over a telecommunications landline facility but does not include wireless.
- (9) “Landline facility” shall mean a conventional telephone facility including twisted-pair lines, carrier facilities and microwave radio facilities for supporting a conventional telephone channel not including satellite or mobile telephone lines using radio transmissions.
- (10) “Reseller” shall mean any telecommunications service provider providing telecommunications service to an end user by resale of all or part of the facilities of another carrier.
- (11) “TAR” shall mean the statewide Tax Area Rate database that identifies the county where the call physically originates and terminates.
- (12) “Telephone Cooperative” shall mean any telephone company operating in Tennessee under the authority of Tenn. Code Ann. Chapter 29.
- (13) “Telecommunications Service Provider” means any incumbent local exchange telephone company or certificated individual or entity, or individual or entity operating pursuant to the approval by the commission of a franchise within § 65-4-207(b), authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law (Tenn. Code Ann. § 65-4-101(c)).
- (14) “Wireless provider” shall mean a provider of telecommunications services such as cellular telephone, paging or personal communications for which all or part of the communications pathway between users includes transmission through radio links.

1220-4-12-.02 SCOPE AND PURPOSE OF RULE

- (1) It is established that there is a public interest need that all landline calls originating and terminating physically within the same Tennessee County to not be assessed toll charges. This public interest need mandates that all telecommunications service providers including but not limited to ILECs, CLECs, IXCs, Resellers and Telephone Cooperatives not bill for such calls when the call is transported over landline facilities.
- (2) This Chapter is not applicable to county-wide calls from wireless telephone service providers or from public payphones.
- (3) Any telecommunications service provider may file a petition with the Authority for relief if it believes that complying with this Chapter will prevent it from achieving a fair rate of return.

1220-4-12-.03 METHODOLOGICAL REQUIREMENTS

- (1) Telecommunications service providers offering service in Tennessee are required to participate in the Tax Area Rate (TAR) database maintained by the Authority, or its designee, for the purpose of determining whether a customer should be charged a toll charge for telephone calls. Prior to billing a customer toll charges in Tennessee all telecommunications service providers shall query the TAR database to ensure that the calling customer is not billed toll charges for any telephone call that originates and terminates within the same county.

1220-4-12-.04 DATABASE ADMINISTRATION

- (1) The Authority shall ensure that the administration of the TAR database is provided in a fair, efficient and economical manner and that each telecommunications service provider at the time of its application for authority to operate in Tennessee is made aware of its responsibility to participate in the database.
 - (a) The Authority shall designate the administrator of the TAR database for a term not to exceed ten (10) years (or 5 years?). The administrator is required to give the Authority a one (1) year's notice of its intent to cease providing the service.
- (2) Information required by the database administrator from telecommunications service provider shall be limited to data necessary to determine the county in which the call originates and terminates.
- (3) The database administrator and all telecommunications service providers with access to the database have a duty to protect the confidentiality of the customer information contained in the database and shall use the information only for the purposes of implementing these rules.
- (4) Within thirty (30) days of the effective date of these rules the database administrator shall publish and distribute to all Telecommunication Service Providers operational guidelines for the administration of the database. Telecommunications service providers shall have thirty (30) days from the date of publication of the operational guidelines to comply with the guidelines.
 - (a) The database administrator shall notify the Authority and telecommunications service providers participating in the TAR database at least thirty (30) days in advance of the effective date of any changes to the guidelines.
- (5) It shall be the responsibility of telecommunications service providers to submit accurate data to the database administrator. Data errors detected by the database administrator shall be returned to the submitting telecommunications service provider for corrections and resubmission within 2 (two) business days.

- (6) Each telecommunications service provider shall submit its updated information to the TAR database administrator no less than twice a month as specified by the guidelines to ensure accuracy of the data.
- (7) Each telecommunications service provider shall receive from the database administrator a bi-monthly update as specified by the guidelines and update its systems with all new additions and deletions.
- (8) The database administrator shall provide to the Authority reports on the operations of the database, as requested.
- (9) Any telecommunications service provider may file a complaint with the Authority regarding any aspect of the operation of the TAR database.

1220-4-12-.05 ACCESS CHARGES PROHIBITED

- (1) No provider of telecommunications services shall bill access charges to or collect access charges from another provider for the origination or termination of an intra-county call.

1220-4-12-.06 PENALTY PROVISION

- (1) Violators of this Chapter shall be subject to a civil penalty, payable to the Authority, pursuant to Tenn. Code Ann. § 65-4-120.
- (2) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.

Authority: T.C.A. §§65-2-102, 65-4-104, 65-4-201.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2004. (08-87)

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

There will be a hearing before the Tennessee Board of Occupational and Physical Therapy Examiners' Committee of Physical Therapy to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, and 63-13-304. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 22nd day of October, 2004.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1150-1-.02, Scope of Practice and Supervision, is amended by deleting parts (2) (a) 2. and (2) (a) 3. in their entirety and substituting instead the following language, so that as amended, the new parts (2) (a) 2. and (2) (a) 3. shall read:

- (2) (a) 2. The licensed physical therapist shall perform and document re-evaluations, assessments, and modifications in the treatment plan at least every thirty (30) days. For patients seen longer than sixty (60) days, the licensed physical therapist shall inspect the actual act of therapy services rendered at least every sixty (60) days.
- (2) (a) 3. The licensed physical therapist may not supervise a physical therapist assistant that is delivering services at a site further than sixty (60) miles or one (1) hour from the licensed physical therapist. The supervising licensed physical therapist must be available to communicate by telephone or other means whenever the physical therapist assistant is delivering services.

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

Rule 1150-1-.04, Qualifications for Licensure, is amended by deleting subparagraphs (4) (a) and (4) (b) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (4) (a) and (4) (b) shall read:

- (4) (a) Applicants for licensure as a Physical Therapist who seek to conduct diagnostic electromyography (invasive needle study of multiple muscles for diagnosis of muscle and nerve disease), pursuant to rule 1150-1-.01 (30) (b), while practicing must submit to the Committee's administrative office documented evidence of possessing current ECS certification from the American Board of Physical Therapy Specialties.
- (4) (b) Applicants for licensure as a Physical Therapist who seek to conduct surface electrophysiological studies (motor and sensory conduction, and somatosensory evoked potentials), and kinesiological studies (invasive needle study of muscles to determine the degree and character of a muscle during certain movements) pursuant to rule 1150-1-.01 (30) (b), while practicing must submit to the Committee's administrative office documented evidence of possessing the theoretical background and technical skills for safe and competent performance of such studies.

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

Rule 1150-1-.12, Continuing Competence, is amended by deleting subparagraphs (5) (d) and (5) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (5) (d) and (5) (e) shall read:

- (5) (d) Courses, seminars, workshops, and symposia attended by the licensee and approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., Chattanooga State Technical Community College, East Tennessee State University, etc.).
- (5) (e) Home study courses or courses offered through electronic media approved by recognized health-related organizations (e.g., American Physical Therapy Association, Tennessee Physical Therapy Association, Arthritis Foundation, etc.) or accredited physical therapy educational institutions (e.g., U.T. Center for the Health Sciences, Volunteer State Community College), and that include objectives and verification of satisfactory completion.

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

Rule 1150-1-.14, Code of Ethics, is amended by deleting the introductory sentences in their entirety and substituting instead the following language, so that as amended, the catchline and the new introductory sentences shall read:

1150-1-.14 Code of Ethics. The Committee adopts for licensed physical therapists, as if fully set out herein, and as it may from time to time be amended, the current "Code of Ethics" issued by the American Physical Therapy Association. The Committee adopts for licensed physical therapist assistants, as if fully set out herein, and as it may from time to time be amended, the current "Standards of Ethical Conduct for the Physical Therapist Assistant" issued by the American Physical Therapy Association. Information to acquire copies may be obtained by contacting either of the following:

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-302, and 63-13-304.

The notice of rulemaking set out herein was properly filed in the Department of State on the 9th day of August, 2004. (08-11)

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

There will be a hearing before the Tennessee Board of Occupational and Physical Therapy Examiners' Committee of Occupational Therapy to consider the promulgation of amendments to rules pursuant to T.C.A. §§4-5-202, 4-5-204, and 63-13-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 20th day of October, 2004.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1150-2-.01, Definitions, is amended by deleting paragraphs (4), (17), and (25) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (4), (17), and (25) shall read:

- (4) Applicant - Any individual seeking licensure by the Committee who has submitted an official application and paid the application fee.
- (17) Fee - Money, gifts, services, or anything of value offered or received as compensation in return for rendering services.
- (25) Registrant - Any person who has been lawfully issued a license.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-202, 63-13-203, and 63-13-212.

Rule 1150-2-.01, Definitions, is amended by deleting paragraphs (6), (7), and (8) in their entirety and renumbering the remaining paragraphs accordingly, and is further amended by adding the following language as new, appropriately alphabetized and numbered paragraphs, so that as amended, the new, appropriately alphabetized and numbered paragraphs shall read:

- () License - Document issued to an applicant who successfully completes the licensure process. The certificate takes the form of an “artistically designed” license as well as other versions bearing an expiration date.
- () Licensed Occupational Therapist (OT) - Any person who has met the qualifications for licensed occupational therapist and holds a current, unsuspended or unrevoked license which has been lawfully issued by the Committee.
- () License Occupational Therapy Assistant (OTA) - Any person who has met the qualifications for licensed occupational therapy assistant and holds a current, unsuspended or unrevoked, license which has been lawfully issued by the Committee. Such person assists and works under the supervision of a licensed occupational therapist.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-103, 63-13-108, 63-13-202, 63-13-203, 63-13-206, and 63-13-212.

Rule 1150-2-.03, Necessity of Certification, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1) and (3) in their entirety, and substituting instead the following language, so that as amended, the new catchline and the new paragraphs (1) and (3) shall read:

1150-2-.03 NECESSITY OF LICENSURE.

- (1) It is unlawful for any person who is not licensed in the manner prescribed in Title 63, Chapter 13 of The Tennessee Code Annotated to represent himself as an occupational therapist or occupational therapy assistant or to hold himself out to the public as being certified by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.
- (3) No person shall hold himself out to the public by a title or description of services incorporating the words “occupational therapist” or “occupational therapy assistant”, nor shall state or imply that he is licensed unless such person is licensed or expressly exempted pursuant to T.C.A. §§63-13-201, *et seq.* The provisions of these rules do not apply to a person if that person is preparing for the practice of occupational therapy under a qualified supervisor in a training institution approved by the committee of occupational therapy.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-103, 63-13-202, 63-13-203, and 63-13-204.

Rule 1150-2-.04, Qualifications for Certification, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (1) and (2) but not their subparagraphs and substituting instead the following language, and is further amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new catchline, the new paragraphs (1) and (2) but not their subparagraphs, and the new paragraph (4) shall read:

1150-2-.04 QUALIFICATIONS FOR LICENSURE.

- (1) To be eligible for licensure as an occupational therapist, an applicant must meet all of the following qualifications:
- (2) To be eligible for licensure as an occupational therapy assistant, an applicant must:
- (4) In determining the qualifications of applicants for licensure as an occupational therapist or as an occupational therapy assistant, only a majority vote of the committee of occupational therapy shall be required.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-108, 63-13-202, and 63-13-203.

Rule 1150-2-.05, Procedures for Certification, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting subparagraphs (1) (n), (1) (o), (2) (n), and (2) (o), so that as amended, the new catchline and the new subparagraphs (1) (n), (1) (o), (2) (n), and (2) (o) shall read:

1150-2-.05 Procedures for Licensure. To become licensed as an occupational therapist or occupational therapy assistant in Tennessee, a person must comply with the following procedures and requirements.

- (1) (n) The initial licensure fee must be received in the Committee’s administrative office on or before the thirtieth (30th) day from receipt of notification that the fee is due. Failure to comply will result in the application file being closed.
- (1) (o) A license will be issued after all requirements, including payment of an initial licensure fee pursuant to Rule 1150-2-.06, have been met.

- (2) (n) The initial licensure fee must be received in the Committee's administrative office on or before the thirtieth (30th) day from receipt of notification that the fee is due. Failure to comply will result in the application file being closed.
- (2) (o) A license will be issued after all requirements, including payment of an initial licensure fee pursuant to Rule 1150-2-.06, have been met.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-108, 63-13-202, and 63-13-203.

Rule 1150-2-.05, Procedures for Licensure, is amended by adding the following language as new subparagraphs (1) (j) and (2) (j) and renumbering the remaining subparagraphs accordingly:

- (1) (j) An applicant shall disclose the circumstances surrounding any of the following:
 1. Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 2. The denial of licensure application by any other state or the discipline of a license in any state.
 3. Loss or restriction of licensure.
 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitations, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory, common or case law.
- (2) (j) An applicant shall disclose the circumstances surrounding any of the following:
 1. Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
 2. The denial of licensure application by any other state or the discipline of a license in any state.
 3. Loss or restriction of licensure.
 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitations, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory, common or case law.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-108, 63-13-202, 63-13-203, and 63-13-209.

Rule 1150-2-.06, Fees is amended by deleting subparagraphs (1) (e), (1) (f) (1) (g), (1) (i), (4) (b), and (4) (i) their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (e), (1) (f) (1) (g), (1) (i), (4) (b), and (4) (i) shall read:

- (1) (e) Initial License Fee - To be paid prior to the issuance of the "artistically designed" licensee.
- (1) (f) Renewal fee - To be paid by all license holders. This fee also applies to individuals who reactivate a retired or lapsed license.

- (1) (g) Duplicate License Fee - To be paid when an individual requests a replacement for a lost or destroyed “artistically designed” license.
- (1) (i) Registration fee - A one time fee to be paid by initial license holders for issuance of a certificate of registration from the Division.
- (4) (b) Duplicate Licensee \$ 25.00 \$ 25.00
- (4) (i) License Fee \$ 75.00 \$ 60.00

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-108, 63-13-202, 63-13-203, and 63-13-204.

Rule 1150-2-.07, Application Review, Approval and Denial, is amended by deleting paragraphs and subparagraphs (2), (5) (c), (5) (d), (6), (7), and (9) in their entirety and substituting instead the following language, so that as amended, the new paragraphs and subparagraphs (2), (5) (c), (5) (d), (6), (7), and (9) shall read:

- (2) Applications for licensure will be accepted throughout the year and completed files will be ordinarily processed at the next Committee meeting scheduled for the purpose of reviewing files.
- (5) (c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.
- (5) (d) An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria only if after review and attempted resolution by the Committee’s administrative staff, the application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal. Such request must be made in writing within thirty (30) days of the receipt of the notice of denial.
- (6) If the Committee finds it has erred in the issuance of a license, the Committee will give written notice by certified mail of its intent to annul the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from date of receipt of the notification.
- (7) Whenever requirements for licensure are not completed within twelve (12) months from the date of the initial review of application and credentials, written notification will be mailed to the applicant and the application file will be closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.
- (9) If an applicant requests an entrance for licensure and, after Committee review, wishes to change that application to a different type of entrance, a new application with supporting documents and an additional application fee must be submitted, i.e., reciprocity to examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-108, 63-13-202, and 63-13-203.

Rule 1150-2-.08, Examinations, is amended by deleting the introductory sentence in its entirety and substituting instead the following language, so that as amended, the new introductory sentence shall read:

Rule 1150-2-.08 Examinations. In addition to having filed an application, an individual seeking licensure shall be required to pass an examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-202, and 63-13-203.

Rule 1150-2-.09, Renewal of Certificate, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (a) and part (1) (b) 2. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (c) but not its parts and substituting instead the following language, and is further amended by deleting subparagraph (1) (d) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (2) (a) but not its parts, so that as amended, the new catchline and the new subparagraph (1) (a), the new part (1) (b) 2., the new subparagraph (1) (c) but not its parts, the new subparagraph (1) (d), the new paragraph (2) but not its subparagraphs, and the new subparagraph (2) (a) but not its parts shall read:

1150-2-.09 RENEWAL OF LICENSE.

- (1) (a) The due date for licensure renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division of Health Related Boards "birthdate renewal system" contained on the renewal certificate as the expiration date.
- (1) (b) 2. Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Committee to the last address provided to the Committee. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (1) (c) A license issued pursuant to these rules is renewable by the expiration date indicated on the renewal certificate. To be eligible for renewal, an individual must submit to the Division of Health Related Boards on or before the expiration date all of the following:
- (1) (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (2) Reinstatement of Expired License
 - (2) (a) Reinstatement of an expired license may be accomplished upon meeting the following conditions:

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, and 63-13-204.

Rule 1150-2-.11, Retirement and Reactivation of Certificate, is amended by deleting the catchline and paragraph (1) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following, and is further amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language,, and is further amended by deleting subparagraph (3) (a) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (4) in its entirety and substituting the following language, so that as amended, the new catchline and the new paragraph (1), the new paragraph (2) but not its subparagraphs, the new paragraph (3) but not its subparagraphs, the new subparagraph (3) (a), and the new paragraph (4) shall read:

1150-2-.11 RETIREMENT AND REACTIVATION OF LICENSE.

- (1) A person who holds a current license and does not intend to practice as a occupational therapist or occupational therapy assistant may apply to convert an active license to inactive ("retired") status. An individual who holds a retired license will not be required to pay the renewal fee.
- (2) A person who holds an active license may apply for retired status in the following manner:

- (3) A licensee whose license has been retired may reenter active status by doing the following:
 - (3) (a) Submit a written request for licensure reactivation to the Committee's administrative office; and
- (4) Licensure reactivation applications shall be treated as licensure applications and review and decisions shall be governed by Rule 1150-2-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-202, 63-13-204, and 63-13-215.

Rule 1150-2-.14, Limited Permit, is amended by deleting paragraph (1) and subparagraph (3) (d) in their entirety and substituting instead the following language, so that as amended, the new paragraph (1) and the new subparagraph (3) (d) shall read:

- (1) A limited permit is allowed only for applicants who are scheduled to sit for the initial exam who will practice in Tennessee and who are awaiting notification of approval of licensure by the Committee.
- (3) (d) If the applicant passes the examination and the results have been received by the Committee within eight (8) weeks after taking the examination, the limited permit will remain effective until the license has been granted. If the applicant passes the examination and the results have not been received by the Committee within eight (8) weeks after taking the examination, the limited permit will expire upon the expiration of such eight (8) week period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-13-202, 63-13-203, and 63-13-205.

Rule 1150-2-.15, Disciplinary Actions, Civil Penalties, and Screening Panels, is amended by deleting subparagraphs (1) (d) and (1) (e) in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (b) but not its parts and substituting instead the following language, and is further amended by deleting part (4) (b) 2. and subpart (4) (b) 3. (ii) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (d) and (1) (e), the new subparagraph (4) (b) but not its parts, the new part (4) (b) 2. and the new subpart (4) (b) 3. (ii) shall read:

- (1) (d) Licensure Suspension - This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the licensure previously issued.
- (1) (e) Licensure Revocation - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the licensure previously issued. If revoked, it relegates the violator to the status he possessed prior to application for licensure. However, the Committee may, in its discretion allow the reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Committee's revocation order.
- (4) (b) After completion of an investigation by the Division, may upon request of either the state, or the licensee who is the subject of an investigation but only with the agreement of the state, or upon agreement of both the licensee and the state, conduct a non-binding informal hearing and make recommendations as a result thereof as to what, if any, terms of settlement of any potential disciplinary action are appropriate.

- (4) (b) 2. A licensee who is the subject of an investigation being considered by a screening panel cannot be compelled to participate in any informal hearing.
- (4) (b) 3. (ii) Agreed to by both the Department of Health, by and through its attorney(s), and the licensee; and

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-138, 63-13-108, and 63-13-209.

Rule 1150-2-.16, Duplicate Certificate, is amended by deleting the catchline and the language of the rule in its entirety and substituting instead the following language, so that as amended, the new catchline and the rule's new language shall read:

1150-2-.16 Duplicate License. A licensee whose "artistically designed" license has been lost or destroyed may be issued a duplicate document upon receipt of a written request in the Committee's administrative office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the required fee pursuant to Rule 1150-2-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, and 63-1-106.

Rule 1150-2-.17, Change of Name and/or Address, is amended by deleting paragraphs (1) and (2) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Change of Name - An individual registered with the Committee shall notify the Committee in writing within thirty (30) days of a name change. The notice shall provide the old name and the new name and must reference the individual's profession and license number.
- (2) Change of Address - Each person holding a license who has had a change of address shall file in writing with the Committee his current mailing address, giving both old and new addresses. Such requests should be received in the Committee's administrative office no later than thirty (30) days after such change is effective and must reference the individual's profession and license number.

Authority: T.C.A. §§4-5-202, 4-5-204, and 63-1-108.

Rule 1150-2-.18, Mandatory Release of Client Records, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) Upon request from a client or the client's authorized representative, an individual licensed by this Committee shall provide a complete copy of the client's records or summary of such records which were maintained by the provider.

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

Rule 1150-2-.19, Committee Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting subparagraphs (4) (c) and (7) (d) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (4) (c) and (7) (d) shall read:

- (4) (c) Denying, withholding, or approving the licensure of an applicant and renewing licenses pursuant to rule 1150-2-.07;
- (7) (d) Complaints made against a licensee become public information only upon the filing of a notice of charges.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-117, 63-13-202, 63-13-203, and 63-13-209.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13th day of August, 2004. (08-49)

BOARD OF VETERINARY MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Veterinary Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§4-5-202, 4-5-204, and 63-12-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 23rd day of November, 2004.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1730-1-.04, Qualifications for Licensure, is amended by deleting subparagraph (2) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (c) shall read:

- (2) (c) Has engaged in active veterinary practice for the previous five (5) years immediately preceding submission of the application. "Active veterinary practice", for the purpose of this section is defined as practice in the area of veterinary medicine as defined in T.C.A. § 63-12-103(7) for an average of thirty (30) hours per week;

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-106, 63-12-112, and 63-12-117.

Rule 1730-1-.11, Retirement and Reactivation of License, is amended by adding the following language as new paragraph (3) and renumbering the present paragraph (3) as paragraph (4):

- (3) If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board shall require payment of the late renewal fee, the past due renewal fee, and the state regulatory fee as provided in Rule 1730-1-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-106, and 63-12-121.

Rule 1730 1 .14, Temporary License, is amended by deleting paragraphs (1), (2), (3), (4), (5) and (6) in their entirety and substituting instead the following language, and is further amended by deleting paragraphs (7), (8) and (9) in their entirety, so that as amended, the new paragraphs (1), (2), (3), (4), (5) and (6) shall read:

- (1) Veterinarian by Examination.
 - (a) An applicant who is a graduate of a school or college of veterinary medicine that is approved by the board and who meets all the qualifications and requirements for a Tennessee veterinary license may also file an application for a temporary license.
 - (b) Unless the Board revokes the temporary license, the temporary license shall expire thirty (30) days after the date of the next scheduled examination.
 - (c) If a holder of a temporary license does not report, without prior notice in writing, to take the next scheduled examination, the temporary license expires on the date of the examination.
 - (d) If a holder of a temporary license fails the examination, he may file an application for another temporary license and pay the fee pursuant to Rule 1730 1 .06.
 - (e) No individual shall be issued more than three (3) temporary licenses under this section.
- (2) Veterinarian by Reciprocity.
 - (a) An applicant who is a licensed veterinarian according to the laws of another state and who meets all other qualifications for licensure may also file an application for a temporary license.
 - (b) The temporary license shall expire upon the Board's ruling on the application for licensure.
- (3) Foreign graduates.
 - (a) An applicant who is a graduate of a non-accredited or non-approved college of veterinary medicine and who satisfactorily completed the fourth (4th) year of clinical study at an accredited or approved college of veterinary medicine may also file an application for a temporary license.
 - (b) The veterinarian shall have passed the examinations as provided in Rule 1730-1-.08.

- (c) The veterinarian shall be currently enrolled in the Educational Commission for Foreign Veterinary Graduates (ECFVG) program of the American Veterinary Medical Association or other certification program deemed by the Board to be equivalent to the ECFVG program.
 - (d) The temporary license is valid until the veterinarian obtains the ECFVG or equivalent certification.
 - (e) A temporary license issued pursuant to this section shall not be valid for more than a maximum of eighteen (18) months from the date the temporary license is issued.
- (4) The application for temporary license must be completed and signed by the supervising veterinarian in the presence of a notary. Information submitted must include the supervising veterinarian's name, Tennessee license number, facility name, address, and telephone number where the temporary license holder will be working.
 - (5) The Temporary License fee specified in Rule 1730 1 .06 must accompany the application for temporary license.
 - (6) The supervising veterinarian must attest that he will provide direct supervision of the temporary license holder. Direct supervision is defined in Rule 1730 1 .10.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-106, 63-12-112, 63-12-113, and Public Chapter 522 of the Public Acts of 2004.

Rule 1730-2-.02, Veterinary Facilities Inspections and Premises Permit, is amended by deleting paragraphs (2) and (8) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2) and (8) shall read:

- (2) The board shall make inspections of veterinary premises once every two (2) years. Inspections shall be done by licensed veterinarian(s) representing the board.
- (8) Any facility, permanent or mobile, where a licensed veterinarian practices must have a premises permit issued by the board. Upon application and payment of fees as set by rule of the board, the board shall cause such facility to be inspected, with re-inspections as necessary. A premises permit shall be issued if the facility meets minimum standards including, but not limited to sanitary conditions, recordkeeping, physical plant and equipment, method of operation, services required, and surgical area.

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

Rule 1730-2-.02, Veterinary Facilities Inspections and Premises Permit, is amended by deleting paragraphs (3), (4), and (5) in their entirety and renumbering the remaining paragraphs accordingly.

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

Rule 1730-2-.08, Small Animal Surgery, is amended by adding the following language as new subparagraph (2) (a) and renumbering the remaining subparagraphs accordingly:

- (2) (a) The surgery room shall be completely and totally enclosed, and shall have four (4) walls, a ceiling, and a solid door or partition that extends to the ceiling.

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

Rule 1730-3-.11, Retirement and Reactivation of License, is amended by adding the following language as new paragraph (3) and renumbering the present paragraph (3) as paragraph (4):

- (3) If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board shall require payment of the late renewal fee, the past due renewal fee, and the state regulatory fee as provided in Rule 1730-3-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-106, 63-12-121, and 63-12-135.

Rule 1730-4-.07, Requirements for Inspection, is amended by adding the following language as new subparagraphs (1) (a), (1) (b), and (1) (c):

- (1) (a) The euthanasia room shall be enclosed and in a separate location from other animals temporarily housed on the premises.
- (1) (b) Cages, pens, and stalls are to be kept in a clean and orderly condition, in a well-lighted area, and in good repair to prevent injury to animals and to promote physical comfort.
- (1) (c) Small animals housed outside must have adequate shelter and bedding if the temperature drops below fifty degrees (50°) Fahrenheit and sufficient cooling or shade if the temperature rises above eighty-five degrees (85°) Fahrenheit.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-106, 63-12-129, 63-12-139, and 63-12-141.

Rule 1730-5-.08, Renewal Application and Reinstatement/Reactivation of Expired or Retired Certificate, is amended by adding the following language as new subparagraph (3) (d) and renumbering the present subparagraph (3) (d) as subparagraph (3) (e):

- (3) (d) If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board shall require payment of the late renewal fee, the past due renewal fee, and the state regulatory fee as provided in Rule 1730-5-.06.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-12-106, 63-12-121, and 63-12-141.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of August, 2004. (08-68)

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CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning August 2, 2004 through August 31, 2004.

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

RILEY C. DARNELL
Secretary of State

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