

TAAAR



RILEY C. DARNELL

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*.

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ANNOUNCEMENTS

THE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 8.75%.

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 November 2004 is 8.71 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 4.71 percent.

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

Kevin P. Lavender

THE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180**PETITION FOR RULEMAKING HEARING**

Mr. Tracey E. Boyers, Attorney
Tennessee Department of Financial Institutions
Office of Legal Counsel
Nashville City Center
511 Union Street, 4th Floor
Nashville, TN 37243

Re: Petition for Rulemaking Hearing, Chapter 0180-17, Pertaining to Mortgage Lending Loan Servicing and Loan Brokering

Dear Ms. Boyers:

On behalf of the Tennessee Mortgage Bankers' Association, an association that combines retail and correspondent mortgage lenders, brokers and their affiliates in the mortgage lending business, I request that a rulemaking hearing be scheduled for the above referenced proposed rules. TMBA has more than 25 members that will be affected by this proposed rule. Please let me know if anything further is needed to effectuate a hearing on this matter.

Sincerely yours,
Martha M. Gentry

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	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-01	Sept 7, 2004	1045 Optometry	Rulemaking Hearing Rules	<i>Chapter 1045-2 General Rules Governing the Practice of Optometry</i> 1045-2-.02 Licensure Process	Nicole Armstrong Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 21, 2004
09-02	Sept 7, 2004	0800 Labor and Workforce Development Occupational Safety and Health	Proposed Rules	<i>Chapters 0800-1-1, 0800-1-2, 0800-1-4, 0800-1-6, 0800-1-7, 0800-1-8 and 0800-1-9</i>	Michael M. Maenza Labor and Workforce Development Occupational Safety and Health 3rd FI A. Johnson Twr 710 J. Robertson Pkwy Nashville TN 37243-0659 (615) 741-7036	Jan 28, 2005
09-03	Sept 8, 2004	0880 Medical Examiners Committee on Physician Assistants	Rulemaking Hearing Rules	<i>Chapter 0880-3 General Rules and Regulations Governing the Practice of a Physician Assistant</i> 0880-3-.15 Disciplinary Grounds, Actions and Civil Penalties <i>Chapter 0880-10 General Rules and Regulations Governing the Practice of an Orthopedic Physician Assistant</i> 0880-10-.15 Disciplinary Grounds, Actions and Civil Penalties	Robert J. Kraemer, Jr., Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 22, 2004
09-05	Sept 1, 2004	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	<i>Chapter 1200-8-29 Standards for Homecare Organizations Providing Home Medical Equipment</i> 1200-8-29-.11 Records and Reports 1200-8-29-.13 Policies and Procedures for Health Care Decision-Making for Incompetent Patients	Ernest Sykes, Jr. Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 15, 2004
09-06	Sept 3, 2004	0400 Environment and Conservation Superfund	Rulemaking Hearing Rules	<i>Chapter 1200-1-13 Inactive Hazardous Substance Site Remedial Action Program</i> 1200-1-13-.03 Remedial Action Fund Fees	Robert Powell Superfund 4th FI L&C Annex Nashville TN 37243-1538 615-532-0916	Nov 17, 2004
09-07	Sept 8, 2004	1150 Occupational and Physical Therapy Examiners Committee of Physical Therapy	Rulemaking Hearing Rules	<i>Chapter 1150-1 General Rules Governing the Practice of Physical Therapy</i> 1150-1-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels	Nicole Armstrong Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 22, 2004

SEQ NO	FILE DATE	DEPARTMENT AND DIVISION	TYPE OF FILING	CHAPTER AND RULE TITLES	LEGAL CONTACT	EFFECTIVE DATE
09-07	Sept 8, 2004	1150 Occupational and Physical Therapy Examiners Committee of Physical Therapy	Rulemaking Hearing Rules	<i>Chapter 1150-1 General Rules Governing the Practice of Physical Therapy</i> 1150-1-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels	Nicole Armstrong Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 22, 2004
09-08	Sept 8, 2004	0470 Dietitian / Nutritionist Examiners	Rulemaking Hearing Rules	0470-1-.15 Disciplinary Actions, Civil Penalties, Informal Settlements, Assessment of Costs, and Subpoenas	Nicole Armstrong Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 22, 2004
09-15	Sept 15, 2004	1155 Podiatry	Rulemaking Hearing Rules	<i>Chapter 1155-2 General Rules and Regulations Governing the Practice of Podiatry</i> 1155-2-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Subpoenas 1155-2-.21 Podiatric Professional Corporations and Podiatric Professional Limited Liability Companies	Nicole Armstrong Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Nov 24, 2004
09-17	Sept 21, 2004	1240 Human Services Family Assistance Division	Rulemaking Hearing Rules	<i>Chapter 1240-1-50 Standard of Need/Income</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson OGC Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Dec 5, 2004
09-19	Sept 23, 2004	1730 Veterinary Medical Examiners	Rulemaking Hearing Rules	<i>Chapter 1730-1 General Rules Governing Veterinarians</i> 1730-1-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels <i>Chapter 1730-2 General Rules Governing Veterinary Facilities</i> 1730-2-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels <i>Chapter 1730-3 General Rules Governing Veterinary Medical Technicians</i> 1730-3-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and	Nicole Armstrong Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 7, 2004

SEQ NO	FILE DATE	DEPARTMENT AND DIVISION	TYPE OF FILING	CHAPTER AND RULE TITLES	LEGAL CONTACT	EFFECTIVE DATE
09-19, cont.				Screening Panels <i>Chapter 1730-5 General Rules Governing Certified Animal Euthanasia Technicians</i> 1730-5-.12 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Screening Panels		
09-21	Sept 24, 2004	0880 Medical Examiners Committee for Clinical Perfusionists	Rulemaking Hearing Rules	<i>Chapter 0880-11 General Rules and Regulations Governing the Practice of Clinical Perfusionists</i> 0880-11-.15 Disciplinary Grounds, Actions, and Civil Penalties	Robert J. Kraemer, Jr Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 8, 2004
09-22	Sept 24, 2004	1000 Nursing	Rulemaking Hearing Rules	<i>Chapter 1000-1 Rules And Regulations Of Registered Nurses</i> 1000-1-.04 Discipline Of Licensees Unauthorized Practice of Professional Nursing Civil Penalties Screening Panels Subpoenas Advisory Rulings Declaratory Orders and Assessment of Costs <i>Chapter 1000-2 Rules and Regulations of Licensed Practical Nurses</i> 1000-2-.04 Discipline Of Licensees Unauthorized Practice of Practical Nursing Civil Penalties Screening Panels Subpoenas Advisory Rulings Declaratory Orders and Assessment of Costs	Richard Russell Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	Dec 8, 2004
09-23	Sept 24, 2004	1370 Communications Disorders and Sciences	Rulemaking Hearing Rules	<i>Chapter 1370-1 Rules for Speech Pathology and Audiology</i> 1370-1-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Subpoenas	Ernest Sykes, Jr Health OGC 26th FI TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 8, 2004
09-26	Sept 29, 2004	0180 Financial Institutions Compliance Division	Public Necessity Rules	<i>Chapter 0180-17 Rules Pertaining to Mortgage Lending, Loan Servicing and Loan Brokering</i> 0180-17-.10 Fees.	Tracey E. Boyers 4th FI Nashville City Center 511 Union St Nashville TN 37219 (615) 532-1017	Sept 29, 2004 through March 13,

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
09-26, cont.				.		2005
09-27	Sept 30, 2004	1240 Human Services Administrative Procedures Division	Rulemaking Hearing Rules	<p><i>Chapter 1240-5-1</i> <i>Introduction</i> 1240-5-1-.01 Grievances 1240-5-1-.02 Agency Rule-Making 1240-5-1-.03 Legal Base 1240-5-1-.04 Scope 1240-5-1-.05 Administrative Review In Vocational Rehabilitation Services</p> <p><i>Chapter 1240-5-3</i> <i>Fair Hearing Requests</i> 1240-5-3-.03 Time Limit For Filing An Appeal</p> <p><i>Chapter 1240-5-8</i> <i>The Final Order</i> 1240-5-8-.01 Time Limitation 1240-5-8-.03 The Final Order 1240-5-8-.06 Recovery When The Final Order Upholds The Local Office</p> <p><i>Chapter 1240-5-9</i> <i>Reconsideration</i> 1240-5-9-.05 Administrative Recourse When Aggrieved By Final Order</p>	Phyllis A. Simpson Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Dec 14, 2004
09-30	Sept 29, 2004	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	<p><i>Chapter 1200-3-29</i> <i>Light-Duty Motor Vehicle Inspection and Maintenance</i> 1200-3-29-.01 Purpose 1200-3-29-.02 Definitions 1200-3-29-.03 Motor Vehicle Inspection Requirements 1200-3-29-.04 Exemption From Motor Vehicle Inspection Requirements 1200-3-29-.05 Motor Vehicle Emission Performance Test Criteria 1200-3-29-.06 Motor Vehicle Anti-Tampering Test Criteria 1200-3-29-.07 Motor Vehicle Emissions Performance Test Methods 1200-3-29-.08 Motor Vehicle Anti-Tampering Test Methods 1200-3-29-.09 Motor Vehicle Inspection</p>	Ms. Vicki Lowe Air Pollution Control 9 th Floor L & C Annex 401 Church Street Nashville, TN 37243-1531 (615) 532-0554	Dec 12, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFEC-TIVE DATE
09-30, cont.				Program 1200-3-29-.10 Motor Vehicle Inspection Fee 1200-3-29-.11 Waiver Provisions 1200-3-29-.12 Area of Applicability		
09-31	Sept 29, 2004	0770 Tennessee Housing Development Agency Section 8 Rental Assistance Program	Rulemaking Hearing Rules	<i>Chapter 0770-1-5 Existing Housing</i> 0770-1-5-.01 General 0770-1-5-.02 Objectives 0770-1-5-.03 Definitions 0770-1-5-.04 Administrative Plan 0770-1-5-.05 Forms 0770-1-5-.06 Program Eligibility 0770-1-5-.07 Application Process 0770-1-5-.08 Selection of Unit 0770-1-5-.09 Tenancy 0770-1-5-.10 Termination of Assistance – Recipient Factors 0770-1-5-.11 Termination of Payments to Owner 0770-1-5-.12 Program Reduction or Termination	Janice Myrick Executive Director 404 James Robertson Parkway Suite 1114 Nashville, Tennessee 37243-0900 (615) 741-2400	Dec 12, 2004
09-32	Sept 17, 2004	1200 Health Board of Alcohol and Drug Abuse Counselors	Rulemaking Hearing Rules	<i>Chapter 1200-30-1 Rules Governing Licensure of Alcohol and Drug Abuse Counselors</i> 1200-30-1-.06 Fees	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Dec 1, 2004

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

Applications will be heard at the November 17, 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 September 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**DESCRIPTION**

Vaughn Home Health Services, Inc.
4525 Harding Road, Suite 200
Nashville (Davidson County), TN 37205
CN0407-061
Contact Person: E. Graham Baker, Jr., Attorney
Phone No. 615-383-3332

The establishment of a home health agency limited to caring for orthopedic and neurosurgery patients only. The proposed services area for this new limited service home health agency will include: Cheatham, Davidson, Dickson, Maury, Robertson, Rutherford, Sumner, Williamson and Wilson Counties. There will be no major medical equipment involved in this project, and no beds will be affected as a result of this application. No other health services will be initiated or discontinued. It is proposed that TennCare, Medicaid, and Medicare patients, in addition to private-pay patients, will be served by the home health agency, and the new home health agency will be licensed by the Tennessee Department of Health. Vaughn Home Health Services is located at 4525 Harding Road, Suite 200, Nashville, TN 37205.
\$ 92,000.00

NAME AND ADDRESS	DESCRIPTION
<p>Gurley Surgery Center 300 20th Avenue North, Suite 102 Nashville (Davidson County), TN 37203 CN0408-074 Contact Person: R. Brian White Phone No. 615-320-8633</p>	<p>The establishment of a single specialty ambulatory surgical treatment center (ASTC) for gynecological procedures performed by the staff of Larry D. Gurley, M.D. Medical Equipment to be used includes hysteroscopy devices. \$ 142,000.00</p>
<p>Smith County Memorial Hospital 158 Hospital Drive Carthage (Smith County), TN 37030 CN0408-075 Contact Person: Noel D. Falls, Senior Consultant Phone No. 251-929-1003</p>	<p>The expansion of magnetic resonance imaging (MRI) through the conversion of its existing mobile service to a fixed-based unit on its campus located at 158 Hospital Drive in Carthage (Smith County), Tennessee 37070. The replacement unit will be housed in a modular building located immediately adjacent to the hospital and attached by a covered walk-way. The proposal requires no construction or renovation. There are no new beds, licensure change, or new health service associated with this project. \$ 491,246.93</p>
<p>Scenic City Isotopes, LLC 2113 McCallie Avenue Chattanooga (Hamilton County), TN 37404-3119 CN0408-076 Contact Person: Jerry W. Taylor, Esq. Phone No. 615-726-1200</p>	<p>The establishment of a cyclotron production facility, to be located at 2113 McCallie Avenue, Chattanooga (Hamilton County), Tennessee. The facility will produce and distribute radiopharmaceutical agents for use in positron emission tomography (PET) imaging. Major medical equipment to be acquired is a 16 MeV Cyclotron. No health care services will be provided by the applicant. The facility will be registered with and/or licensed by the Division of Radiological Health of the Tennessee Department of Environment and Conservation. \$ 2,878,261.55</p>
<p>Chattanooga Pain Management Center, LLC 261 Ring Road Hixson (Hamilton County), TN 37343 CN0408-077 Contact Person: Darin Jay Hill, Vice President of Development Phone No. 919-329-2882</p>	<p>The establishment of an ambulatory surgical treatment center (ASTC) limited to pain management. The facility contains 9,000 square feet of space with one operating room and two procedure rooms located at 261 Ring Road, Hixson (Hamilton County), Tennessee. The project does not contain any major medical equipment and no other health services will be initiated or discontinued. \$ 4,486,352.00</p>

NAME AND ADDRESS	DESCRIPTION
<p>Marshall Medical Center 1080 North Ellington Parkway Lewisburg (Marshall County), TN 37091-0609 CN0408-078 Contact Person: Bob Lonis, Corporate Director-Finance Phone No. 931-540-4163</p>	<p>The conversion of five (5) existing general acute beds to swing beds and the initiation of swing bed services. The initiation of the swing bed service will not increase the licensed bed capacity of the hospital. These beds will be licensed as hospital beds for the Tennessee Department of Health. The project does not contain any major medical equipment or initiate or discontinue any other health service</p> <p>\$ 28,000.00</p>
<p>West Tennessee Bone and Joint Clinic 24 Physicians Drive Jackson (Madison County), TN 38305 CN0408-079 Contact Person: John Wellborn, Consultant Phone No. 615-665-2022</p>	<p>The establishment of an outpatient diagnostic center (ODC) with a magnetic resonance imaging (MRI) unit to be limited to the medical practices of West Tennessee Bone & Joint Clinic, P.C. and West Tennessee Neurosurgical Clinic, P.C. The facility will be located at the West Tennessee Bone & Joint Clinic practice office located at 24 Physicians Drive, Jackson (Madison County), Tennessee 38305. It will replace a three (3) day per week mobile MRI service currently serving patients at its facility. It will be placed in a new 2,050 square foot addition to the practice office building at this address. The ODC will be licensed by the Tennessee Department of Health. This project does not contain any other major medical equipment, initiate or discontinue any other health service, or affect inpatient bed complements at any facility.</p> <p>\$ 2,337,657.00</p>
<p>Generations Center of Spencer 87 Generations Drive Spencer (Warren County), TN 38585 CN0408-080 Contact Person: E. Graham Baker, Esq. Phone No. 615-383-3332</p>	<p>The addition of ten (10) Medicare skilled beds. The nursing home now has sixty (60) beds: seventeen (17) skilled (Level II) and forty-three (43) intermediate (Level I). The addition of these ten (10) skilled beds will bring the total licensed beds at the nursing home to seventy (70) beds: Twenty-seven (27) skilled (Level II) and forty-three (43) intermediate (Level I) beds. There will be no major medical equipment involved in this project. No other health services will be initiated or discontinued. It is proposed that TennCare, Medicaid, and Medicare patients, in addition to private-pay patients, will continue to be served by the nursing home, and the nursing home will continue to be licensed by the Tennessee Department of Health.</p> <p>\$ 63,500.00</p>

NAME AND ADDRESS

DESCRIPTION

St. Francis Hospital – Bartlet
2986 Kate Bond Road
Bartlett (Shelby County), TN 38134
CN0408-083
Contact Person: William H. West, Attorney
Phone No. 615-726-5600

The initiation of cardiac catheterization services and the acquisition of cardiac catheterization laboratory equipment. The project will be located at St. Francis Hospital – Bartlett, 2986 Kate Bond Road, Bartlett, Tennessee 38134. No inpatient beds are affected.
\$ 1,665,576.38

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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)
- 1200 - Department of Health and Environment - Division of Superfund - Emergency rules providing standards for testing and cleaning clandestine drug manufacturing sites, chapter 1200-1-19 Standards for Testing and Cleaning Clandestine Drug Manufacturing Sites, 9 T.A.R. (September 2004) - Filed August 18, 2004; effective through January 30, 2005. (08-58)

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PROPOSED RULES

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

CHAPTER 0800-1-2 VARIANCES FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS

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

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

SUMMARY OF PROPOSED RULES OF DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

CHAPTERS 0800-1-1, 0800-1-2 , 0800-1-4, 0800-1-6, 0800-1-7, 0800-1-8 AND 0800-1-9

The Department of Labor and Workforce Development, Division of Occupational Safety and Health, is revising the occupational safety and health rules in Chapters 0800-1-1 Occupational Safety and Health Standards for General Industry; 0800-1-2 Variances from Occupational Safety and Health Standards; 0800-1-4 Occupational Safety and Health Inspections, Citations and Proposed Penalties; 0800-1-6 Occupational Safety and Health Standards for Construction; 0800-1-7 Occupational Safety and Health Standards for Agriculture; 0800-1-8 Discrimination Against Employees Exercising Rights Under the Occupational Safety and Health Act of 1972; and 0800-1-9 Hazardous Chemical Right to Know.

Rule 0800-1-1-.06(2) is amended to change the effective date of the OSHA standards that the division adopts as the enforcement authority for general industry violations from July 1, 2004 to January 1, 2005. This change assures that we are using the current version of the OSHA standards. There were no substantive changes to the standards during this period.

Chapters 0800-1-2 and 0800-1-4 are replaced with new chapters to correct errors, update references, and make the rules more functional and easier to understand.

Rule 0800-1-6-.03(2) is amended to change the effective date of the OSHA standards that the division adopts as the enforcement authority for construction activities from July 1, 2004 to January 1, 2005. This change assures that we are using the current version of the OSHA standards. There were no changes to the standards during this period.

Rules 0800-1-7-.01(2) and 0800-1-7-.02 are amended to change the effective date of the OSHA standards that the division adopts as the enforcement authority for agricultural activities from July 1, 2004 to January 1, 2005. This change assures that we are using the current version of the OSHA standards. There were no changes to the standards during this period.

Rules 0800-1-8-.03(1) and 0800-1-9-.09(2) are amended to corrects typographical errors.

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

The proposed rules set out herein were properly filed in the Department of State on the 7th day of September, 2004, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of January, 2005. (09-02)

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)
- 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)
- 1540 - TN Higher Education Commission - Public necessity rules relative to the waiver of tuition and fees for state employees, chapter 1540-1-4 Public Higher Education Fee Waivers for State Employees, 9 T.A.R. (September 2004) - Filed August 31, 2004; effective through February 12, 2005. (08-79)
- 1540 - TN Higher Education Commission - Public necessity rules relative to the fee discounts for children of licensed public school teachers and state employees, chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees, 9 T.A.R. (September 2004) - Filed August 31, 2004; effective through February 12, 2005. (08-81)

**THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180
COMPLIANCE DIVISION**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Submitted herewith are proposed amendments to Chapter 0180-17 Rules Pertaining to Mortgage Lending, Loan Servicing and Loan Brokering of the rules of the Tennessee Department of Financial Institutions for promulgation under the public necessity provision of the Uniform Administrative Procedures Act. The Commissioner has adopted these rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4). Tenn. Code Ann. § 4-5-209(a)(4) authorizes an agency to adopt public necessity rules when “[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of rules.”

Public Chapter 747 makes amendments to the Residential Lending, Brokerage and Servicing Act, Tenn. Code Ann. § 45-13-101 *et seq.* (Mortgage Act). The most significant amendment is the requirement that, effective January 1, 2005, all mortgage loan originators must register with the Department of Financial Institutions in affiliation with one licensed/registered mortgage company. This public necessity rule is being promulgated in order to provide the Department with the necessary funding to implement the mortgage loan originator registration provisions set forth in Public Chapter 747.

Specifically, Public Chapter 747 mandates that on January 1, 2005, a licensee/registrant under the Mortgage Act cannot retain the services of an individual mortgage loan originator without first registering that mortgage loan originator with the Commissioner of Financial Institutions. Public Chapter 747 adds Tenn. Code Ann. § 45-13-126(b) which provides that, to register a mortgage loan originator, a completed registration form must be submitted to the Commissioner. Moreover, § 45-13-126(c) requires that the registration form of each mortgage loan originator be accompanied by a registration fee as prescribed by the Commissioner.

It is necessary to promulgate this public necessity rule so that the Department can begin the registration of mortgage loan originators on January 1, 2005 as mandated by the General Assembly. This public necessity rule prescribes the fee which must accompany the registration form for each mortgage loan originator. It is this registration fee which is integral to the funding and implementation of Public Chapter 747.

The Department estimates receiving upwards of ten thousand (10,000) registration forms for mortgage loan originators within the upcoming calendar year. In order to manage this volume of registration and to carry out the Department’s duty to maintain and update a record of all registered mortgage loan originators in this State, the Department must hire additional personnel and create a computerized system to accept and process the registration forms. However, without the authority to collect the registration fees prescribed by this public necessity rule the Department will not be able to meet its statutory duty of assuring compliance with the standards set forth in Public Chapter 747.

Due to the length of time necessary to complete the rulemaking process under the Uniform Administrative Procedures Act, this public necessity rule should be implemented immediately in order to permit the Department to begin the registration of mortgage loan originators required by Public Chapter 747 and until permanent rules are implemented.

For a complete copy of this public necessity rule, please contact Tracey E. Boyers, Department of Financial Institutions, 4th Floor, Nashville City Center, 511 Union Street, Nashville, Tennessee, 37219, telephone 615-741-0346.

Kevin P. Lavender, Commissioner
Tennessee Department of Financial Institutions

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS
COMPLIANCE DIVISION**

**CHAPTER 0180-17
RULES PERTAINING TO MORTGAGE LENDING,
LOAN SERVICING AND LOAN BROKERING**

AMENDMENTS

The Table of Contents, Section 0180-17-.10 is amended by deleting the title in its entirety and substituting instead the following language so that, as amended, the title shall read:

0180-17-.10 FEES.

Rule 0180-17-.10 is further amended by deleting the rule in its entirety and substituting the following language so that, as amended, it shall read as follows:

- (1) The commissioner hereby prescribes the following fees.
 - (a) Registration statement. Each registrant filing a registration statement pursuant to T.C.A. § 45-13-103(b)(1), shall pay to the commissioner, at the time of filing such registration statement, a non-refundable registration fee of one hundred dollars (\$100) and a non-refundable investigation fee of one hundred dollars (\$100). Each registrant shall file a renewal application and pay a renewal fee of one hundred dollars (\$100) to the commissioner on or before December 1 of each year for the following year's registration commencing on January 1. Should the registrant fail to file the renewal application and renewal fee by December 1, the registrant will have to file an application for registration together with the one hundred dollar (\$100) registration fee and the one hundred dollar (\$100) investigation fee to obtain the renewed registration.
 - (b) Fees for registration of each mortgage loan originator.

1. Initial registration	\$100.00
2. Annual renewal of registration	\$100.00
 - (c) Fee for obtaining substitute license, certificate of registration, or mortgage loan originator registration certificate \$25.00
- (2) Fees paid to the commissioner are non-refundable.

Authority: T.C.A. §§45-1-107(h), 45-13-105(c)(2), 45-13-117, 45-13-119; and Chapter 747 of Acts of 2004.

The public necessity rules set out herein were properly filed in the Department of State on the 29th day of September, 2004, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 13th day of March, 2005. (09-26)

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RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES - 0250 FISCAL DIVISION

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in conference room B on the seventh floor of the Cordell Hull Building located at 436 6th Avenue North, Nashville, Tennessee, 37243 at 9:00 a.m., central standard time on the 15th day of November, 2004.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate 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 Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7th floor of the Cordell Hull Building, 436 6th Avenue North, Nashville, Tennessee, 37243, 615-741-9175.

For a copy of this notice of rulemaking hearing, contact John Sparks, 7th Floor, Cordell Hull Building, 436 6th Avenue North, Nashville, TN 37243-1290. (615) 532-4801.

CHAPTER 0250-7-10 ADMINISTRATION OF COLLECTIVE FUND ACCOUNTS

AMENDMENTS

0250-7-10.01 through 0250-7-10.12 is amended by deleting 0250-7-10.01 through 0250-7-10.12 in its entirety and adding the following so that as amended the rules shall read:

TABLE OF CONTENTS

0250-7-10-.01 Purpose	0250-7-10-.07 Interest on Funds
0250-7-10-.02 Definitions	0250-7-10-.08 Administrative Charges
0250-7-10-.03 Policy	0250-7-10-.09 Management of Child Information
0250-7-10-.04 Custodian of Collective Funds	0250-7-10-.10 Accounting for Personal Accounts
0250-7-10-.05 Accounting for Funds	0250-7-10-.11 Additional Rules for Social Security Benefits
0250-7-10-.06 Authorized Expenditures	0250-7-10-.12 Amendments or Waiver of Rules

0250-7-10-.01 PURPOSE.

The purpose of these rules is to establish policies and procedures for the accounting and use of money held in children's accounts in the Collective Fund for children in the custody of the State. These funds may include, but are not limited to: Social Security benefits (Title II and Title XVI), Railroad Retirement benefits, Veterans benefits, Black Lung benefits, and child support.

Authority: *T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).*

0250-7-10-.02 DEFINITIONS.

- (1) The term "authorized expenditures" means those expenses incurred on behalf of children which have been approved by those persons designated to purchase services or goods.
- (2) The term "beneficiary" means the child for whom the Children's Services maintains an account in the Collective Fund.
- (3) The term "Black Lung benefits" means those benefits established by the Federal Coal Mine Health and Safety Act of 1969, Title IV, for miners totally disabled by black lung disease and for dependents of miners who had died from the disease or were totally disabled from the disease at death.
- (4) The term "Cash Basis" means the method of accounting in which the revenues and expenditures are recognized when payments are received or made.
- (5) The term "child" shall conform to TCA §§37-1-102 (b) (4) and 37-1-103(c) provided, however, for purposes of accounting for the funds of a person remaining in the care of the State of Tennessee after the person's 19th birthday, the term shall include a person who was previously placed in the custody of the State of Tennessee prior to the person's 18th birthday.
- (6) The term "Collective Fund" for the purposes of these rules refers to the collection of children's accounts used to account for the receipt and disbursement of benefits received from the federal government and to provide for the current and future needs of children in state custody. Benefits currently received for children include SSA (Title II), SSI (Title XVI), RR, Black Lung, Veteran's and Child Support.
- (7) The term "Commissioner of the Department of Children's Services" means the Governor's appointee to assume the charge and general supervision of the Department of Children's Services.
- (8) The term "current benefits" means those benefits, which are allowed to be spent on behalf of a child for the person's current or reasonably foreseeable needs.
- (9) The term "custodial department" means the department of state government which has been awarded legal custody of the child by a court.
- (10) The term "Department" means the State's Department of Children's Services.
- (11) The term "DCS" stands for the Department of Children's Services.
- (12) The term "Department of Children's Services" or "DCS" means the Department responsible for administering the collective fund.

- (13) The term “disbursement of funds” means the payment of funds for authorized expenditures for the well-being of the child. This includes the pass through of current benefits to the parent, relative, or other person with whom children are home on trial visits.
- (14) The term “first in, first out” means qualifying current obligations that will be paid in the chronological order in which they were received.
- (15) The term “funding source” means a federal agency from which monetary benefits are received by the State for children in state custody or child support.
- (16) The term “interest income” means interest earned on funds deposited in a State interest-bearing account, net of administrative fees incurred by State Treasurer’s Office.
- (17) The term “legal custody” means the legal right and responsibility to provide for the physical, mental, moral and emotional well-being of the child (i.e., like those rights exercised by a parent).
- (18) The term “lump sum payment or retroactive benefits” means receipt of accumulated benefits for the purpose of these rules that have been identified by SSA as Dedicated Funds.
- (19) The term “monthly balances” means the net amount of funds on hand in an account on the last day of each month.
- (20) The term “open ended entitlement funds” means federal funds which the State is authorized to use for the benefit of eligible clients. This includes Title XIX, and Title IV-E.
- (21) The term “personal need allowance (PNA)” means monies made available to the child for personal use.
- (22) The term “physical custodian” refers to the person in charge of a household or facility where an individual in custody is living.
- (23) The term “POMS” refers to the Social Security Administration’s Program Operations Manual System.
- (24) The term “railroad retirement” means benefits made available on behalf of a child which are authorized by Railroad Retirement.
- (25) The term “representative payee” means that person designated by the funding source or court order to receive and be responsible for the use of funds on behalf of the child and to ensure that the beneficiary’s current and reasonably foreseeable future financial and physical needs are met.
- (26) The term “SSA” stands for the Social Security Administration.
- (27) The term “State Treasurer’s account” means an account maintained by the State Treasurer.
- (28) The term “Tennessee Office of the Treasurer interest rate” means the rate of interest determined and paid by the State Treasurer.
- (29) The term “Title II funds” means social security benefits (SSA) funds made available from the Social Security Administration for the care and maintenance of a child having deceased, aged, or disabled parent(s), as provided in Title II of the Social Security Act.
- (30) The term “Title IV-E” for the purposes of these rules means the program under AFDC Foster Care. Title IV-E provides for the maintenance payments made for eligible children in foster care family homes or child care

institutions housing up to 25 people, and that portion of the title which permanently authorized States to develop adoption assistance agreements with the adoptive parents of children with “special needs.” A maintenance payment is the expenditure for room, board, clothing and food.

- (31) The term “Title XVI funds” means supplemental security income (SSI) funds made available from the Social Security Administration for the care and maintenance of a child with a disability, as provided in Title XVI of the Social Security Act.
- (32) The term “Title XIX” refers to medical assistance (Medicaid) provided under Title XIX of the Social Security Act.
- (33) The term “trial home visit” is defined for purposes of these rules as the return of physical custody of the child to a parent, relative or other appropriate individual to determine whether full custody should be granted to that parent, relative, or other appropriate individual; however, the State retains legal custody during the trial home visit period.
- (34) The term “Veteran’s” for the purposes of these rules, means the benefits and services to eligible veterans, members of their families, and survivors of deceased veterans.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.03 POLICY.

The State will maintain funds on behalf of the beneficiary and expend the funds for authorized expenditures the State has incurred for the care of the beneficiary during the time period that the Commissioner has been designated as the representative payee by the funding source or court order. The funds may be used for personal spending on behalf of the beneficiary, but they may not be used for educational expenditures which are guaranteed by the State’s Constitution. Funds which are governed by federal grants, state statutes, or federal regulations or policies will be administered according to those guidelines.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.04 CUSTODIAN OF COLLECTIVE FUNDS.

The Commissioner of the Department of Children’s Services shall serve as the custodian of all accounts in the Collective Fund accounts. The custodian shall comply with these rules and shall ensure the employment of the appropriate accounting principles.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.05 ACCOUNTING FOR FUNDS.

- (1) All funds will be made available to be expended by the State for authorized, cash basis expenditures during the month in which funds are received. Any money not used for current and reasonably foreseeable needs will be conserved in accordance with these rules. If the State seeks to use the trust funds for reimbursement for previously paid bills, it will seek approval from the appropriate funding source.

- (2) The authorized funds must be recorded in the State accounting system during the months in which they are credited to a child's account within the Collective Fund.
- (3) All qualifying current authorized expenditures will be paid on a first in, first out method.
- (4) All funds must be maintained in an account supervised by the Tennessee Office of the Treasurer.
- (5) Accountings shall not list separate Funding Sources. There will be no such accounting unless doing so is required by federal or state regulations. If federal or state regulations require an accounting based on Funding Sources, the benefits, including interest, will be coded by type of Funding Source and authorized disbursements will be coded to correspond to the type of Funding Source.
- (6) Funds received will be used in the order established by the Commissioner of Department of Children's Services in compliance with state and federal regulations.
- (7) Interest on all funds will be credited monthly.
- (8) Any change in the basis of accounting will be recommended by the Commissioner of Department of Children's Services to the Commissioner of Finance and Administration for approval.
- (9) Exceptions to the above mentioned procedures will be granted only after written direction by an appropriate official designated by the Commissioner of the Department of Children's Services.
- (10) DCS will work with the funding source to identify all unidentified funds. Funds that remain unidentified for a period of two (2) years will be returned to the funding source. Funds for which funding source cannot be identified will be transferred to unclaimed property of the Tennessee Office of the Treasurer.
- (11) Reimbursement received from private insurance or other source of funds for costs paid from the Collective Fund will be used to reimburse the child's account in the Collective Fund.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.06 AUTHORIZED EXPENDITURES.

The following will define expenditures for which funds can be used:

- (1) Expenditures for room and board, except those not allowed by state or federal regulations or laws. These expenditures are those authorized by the state or its agents.
- (2) Expenditures for medical expenses, except those not allowed by regulations as outlined in paragraph six (6) of Section 0250-7-1-.05 "Accounting for Funds."
- (3) Expenditures for education expenses not guaranteed by the State's Constitution or statutes; and
- (4) Any miscellaneous expenditure which would benefit the welfare of the beneficiary. The miscellaneous expenditures will be classified by nature of the expenditure (e.g., clothing, travel, etc.).

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.07 INTEREST ON FUNDS.

- (1) Collection of interest will be in accordance with the regulations of the Tennessee Office of the Treasurer Regulations.
- (2) Except as provided in Rule 0250-7-1-.11, interest on funds will be assigned to each child's account in the Collective Fund according to the method established for the State by the Tennessee Office of the Treasurer.
- (3) No interest will be granted to funds not maintained in a Tennessee Office of the Treasurer account.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.08 ADMINISTRATIVE CHARGES.

An administrative charge will be set based upon a rate approved by the Commissioner of Finance and Administration. The administrative charge must be in compliance with the requirements of federal statutes, regulations, and the SSA Program Operations Manual System (POMS).

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.09 MANAGEMENT OF CHILD INFORMATION.

All information and reporting requirements regarding the collective fund will be the responsibility of the Department of Children's Services. These include representative payee reports, court-ordered reports, other federal reports, or any additional required or requested reports.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.10 ACCOUNTING FOR PERSONAL ACCOUNTS.

- (1) Each residential provider and/or individual having responsibility for the child may hold personal funds on behalf of the child. These personal funds may include, but are not limited to, allowances, wages earned, and gifts.
- (2) These personal funds will not be a part of the child's account in the Collective Fund maintained by DCS.
- (3) The accountability for personal funds will be the responsibility of the DCS facility where the child is placed while in the Department's physical custody, or the contract agency where the child is in the physical custody of a contract agency, regardless of where the personal funds are held. The DCS Facility, or contract agency, shall place any personal funds exceeding one-hundred and fifty (\$150) in an interest-bearing account and shall furnish any information about the personal funds requested by DCS.
- (4) The state may authorize the use of personal funds on a case-by-case basis for the care and maintenance of the child, if the child's eligibility for means-tested entitlements is jeopardized because the monthly balance of the child's personal account exceeds that allowed by the Funding Source.

- (5) With respect to resources or income, the State must report earnings for a Social Security beneficiary who works for more than the annual limit (\$8,160 for 1995). For SSI recipients, the State must report all changes to the recipient's income or resources. The custodial department shall report additional income and resources as required by Social Security to Children's Services.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.11 ADDITIONAL RULES FOR SOCIAL SECURITY BENEFITS

- (1) With respect to Title II and Title XVI funds, to the extent that the rules in this section conflict with any other rules, or are more specific than, any of the rules in these rules, the rules in this section shall control.
- (2) DCS will maintain a separate accounting for each child's benefits account.
 - (a) Upon written request, DCS will send an annual accounting by category for monthly expenditures of the use of the child's funds to the committing court, the child's attorney or guardian ad item, or the child, if age 17 or over.
 - (b) Accountings will be sent to a child's parent or guardian only if such release of information is approved by DCS and does not violate federal or state law.
 - (c) Requests can be made only once a year on behalf of each child beneficiary. The child in custody for less than a year is entitled to an annual accounting by category as well.
 - (d) DCS will maintain a written record of the number of accounting requests received, the date of receipt, the number processed, and the date the accounting was provided and to whom the information was provided.
- (3) DCS shall provide information about a child's benefits to the child beneficiary's custodial department worker, including information about the child's benefits and about the custodial department worker's right to ask for special items for the child, if there is money left after current maintenance is provided for the child. A copy of the child's benefits summary shall be placed in the child's case file at the custodial department.
- (4) Notwithstanding Rules 0250-7-10-.05(3), (8) and (9), DCS will not use a lump sum payment or retroactive benefits, defined by SSA as dedicated funds, for Title XVI award for payment of a child's prior care without the express written authority from the SSA.
- (5) Refund of unused balances to the funding source will be made in accordance with written regulations of the SSA not to exceed 60 days.
- (6) If a child who receives SSI enters an institution in which a major portion of a bill is paid by the Title XIX program, the representative payee shall inform the SSA of the placement. DCS will comply with instructions from SSA for each child concerning the refund or the use of funds.
- (7) In the event that a child receives Title XVI funds, the child's placement facility, or any other fiduciary who holds any funds for such child shall report monthly the balances of the child's personal funds to DCS in order for DCS to meet its accountability and reporting duties to the SSA.
- (8) These rules are subject to the requirements of state statutes, federal statutes, regulations, and the SSA Program Operations Manual System (POMS). To the extent that these rules are or may become in conflict

with the requirement of federal statutes, regulations, or the SSA POMS as may be amended, the federal statutes, regulations, or the SSA POMS shall govern.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 42 U.S.C. §§405 et seq. And 1382 et seq., 20 C.F.R. 404.301 et seq., 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

0250-7-10-.12 AMENDMENTS OR WAIVER OF RULES.

The Commissioner of the Department of Children's Services reserves the right to amend or waive any or all of these rules, with the exceptions of rules which are included to comply with regulations of the Funding Sources, if deemed in the best interest of the state.

Authority: T.C.A. §§4-3-1007; 4-4-102; 4-5-217 and Executive Order No. 58; 4-5-226(b)(2); 37-5-101; 37-5-105; 37-5-106 and 37-5-112(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2004. (09-34)

THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF WATER SUPPLY

There will be a hearing before the Division of Water Supply Staff representing the Water Quality Control Board of the Department of Environment and Conservation to hear comments from the public concerning amendments to the Regulations for Public Water Systems and Drinking Water Quality Chapter 1200-5-1 pursuant to T.C.A. 68-221-701 et seq. The proposed amendments were drafted primarily to incorporate into state regulations the revised fire hydrant color coding, turbidity monitoring, and water line disinfection practices. Other minor housekeeping corrections are also being proposed. 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:

Fleming Training Center
2022 Blanton Drive
Main Auditorium
Murfreesboro, TN
10:00 am
November 23, 2004

Written comments will be also considered if received at the Division of Water Supply, 401 Church Street, Nashville, TN 37243-1549 by the close of business November 30, 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 tother 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 1866-253-5827 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 nearest office of the Tennessee Division of Water Supply at 1-888-891-8332 or the central office of the Division at 615-532-0191. Complete text of the proposed Rules may also be found by visiting the Department of Environment and Conservation's Web site at <http://www.state.tn.us/environment/dws/index.html>

**SUMMARY OF THE PROPOSED RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER SUPPLY

CHAPTER 1200-5-1
PUBLIC WATER SYSTEMS**

The Division of Water Supply is proposing to make several changes to drinking water regulations. A number of the changes proposed minor technical corrections having no significant impact on the regulated community. The proposed changes which public water systems may find significant include: allowing fire hydrants on water mains less than 4-inches in diameter provided the hydrants are painted black, allowing public water systems to write their own new or repaired water lines disinfection procedures rather than purchase and follow AWWA methods and specifies that boil water advisories must be issued if positive bacteriological samples are collected from newly disinfected and repaired water lines, identifies bacteriological quality assurance samples as compliance samples, extends the required time turbidity records must be kept up to five years, requires continuous turbidity monitors and recorders on combined filter effluents, adds treatment technique failures to the list of violations requiring public notice, extends source water protection measures to surface water sources, proposes to require plans review fees on any line extension of more than 500 feet in any one year and sets turbidity limits for small subpart H systems using alternate filtration technologies.

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of September, 2004. (09-24)

**THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180
COMPLIANCE DIVISION**

There will be a hearing before the Tennessee Department of Financial Institutions to consider the promulgation of amendments to its rules pursuant to Tennessee Code Annotated Section 4-5-201 *et seq.* and Chapter 747 of Public Acts of 2004. The hearing will be conducted as prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 4th Floor Conference Room, Suite 400, Nashville City Center, 511 Union Street, Nashville, Tennessee, 37219, at 9:00 a.m. C.S.T. on Monday, December 6, 2004.

Written comments will be considered if received by close of business, Monday, December 6, 2004. Please address written comments to Commissioner of Financial Institutions, 4th Floor, Nashville City Center, 511 Union Street, Nashville, Tennessee, 37219.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Financial Institutions to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Department of Financial Institutions to determine how it may reasonably provide such aid or service. Initial contact may be made with ADA Coordinator Debbie Curry at Tennessee Department of Financial Institutions, 4th Floor, Nashville City Center, 511 Union Street, Nashville, Tennessee, 37219, telephone number (615) 532-1014.

For complete copies of the proposed rule, please contact Staff Attorney Tracey E. Boyers, 4th Floor, Nashville City Center, 511 Union Street, Nashville, Tennessee, 37219, telephone number (615) 532-1017.

SUMMARY OF PROPOSED RULES

These amendments are proposed for the purpose of setting forth the fees which the Commissioner of Financial Institutions is authorized to impose pursuant to Chapter 747, Public Acts of 2004.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0180-17
RULES PERTAINING TO MORTGAGE LENDING,
LOAN SERVICING AND LOAN BROKERING**

AMENDMENTS

The Table of Contents, Section 0180-17-.10 is amended by deleting the title in its entirety and substituting instead the following language so that, as amended, the title shall read:

0180-17-.10 FEES.

Rule 0180-17-.10 is further amended by deleting the rule in its entirety and substituting the following language so that, as amended, it shall read as follows:

- (1) The commissioner hereby prescribes the following fees.
 - (a) Registration statement. Each registrant filing a registration statement pursuant to T.C.A. § 45-13-103(b)(1), shall pay to the commissioner, at the time of filing such registration statement, a

non-refundable registration fee of one hundred dollars (\$100) and a non-refundable investigation fee of one hundred dollars (\$100). Each registrant shall file a renewal application and pay a renewal fee of one hundred dollars (\$100) to the commissioner on or before December 1 of each year for the following year's registration commencing on January 1. Should the registrant fail to file the renewal application and renewal fee by December 1, the registrant will have to file an application for registration together with the one hundred dollar (\$100) registration fee and the one hundred dollar (\$100) investigation fee to obtain the renewed registration.

(b) Fees for registration of each mortgage loan originator.

1. Initial registration	\$100.00
2. Annual renewal of registration	\$100.00

(c) Fee for obtaining substitute license, certificate of registration, or mortgage loan originator registration certificate \$25.00

(2) Fees paid to the commissioner are non-refundable.

Authority: T.C.A. §§ 45-1-107(h), 45-13-105(c)(2), 45-13-117, 45-13-119; and Chapter 747 of Acts of 2004.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of September, 2004. (09-25)

HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

There will be a hearing before the Tennessee Health Services and Development Agency to consider the promulgation of rules on behalf of the Tennessee Health Services and Development Agency pursuant to T.C.A. § 4-5-203 and 4-5-204, and T.C.A. § 68-11-1605. 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 Rooms 12, 14 of the Legislative Plaza, 6th Avenue North, Nashville, TN, at 10:00 A.M. C.D.T. on the 19th day of November, 2004.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Tennessee Health Services and Development Agency 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 agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the agency's ADA Coordinator at the Tennessee Health Services and Development Agency, 500 Deaderick Street, Suite 850, Andrew Jackson State Office Building, Nashville, Tennessee 37243, and (615)741-2364.

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

Sue Kerley, 500 Deaderick Street, Suite 850, Andrew Jackson State Office Building, Nashville, Tennessee 37243, Tennessee Health Services and Development Agency, and (615)741-2364.

SUBSTANCE OF PROPOSED RULES

0720-8-.01	Communications	0720-8-.04	Access to Agency Records
0720-8-.02	Conflicts of Interest	0720-8-.05	Conducting Agency Meetings
0720-8-.03	Requests for Determination	0720-8-.06	Beginning of Review Cycles

0720-8-.01 COMMUNICATIONS

- (1) All documents, information, and written communications which are required to be filed with the Tennessee Health Services and Development Agency (hereinafter the "Agency") must be received at The Agency's business office located in Nashville, Tennessee, during normal business hours.
- (2) The filing date of any document shall be the actual date of receipt in The Agency office. In the event the last appropriate filing date falls on a Saturday, Sunday, or legal holiday, such filing must occur on the business day immediately preceding.
- (3) Such documents, information, and written communications shall not be sent by facsimile transmission. Any such documents, information, and written communications which are received by facsimile transmission will not be considered as having been "filed" with The Agency.

Authority: T.C.A §§68-11-1605; 68-11-1607; 4-5-202.

0720-8-.02 CONFLICT OF INTEREST

- (1) Definitions
 - (a) "Conflict of interest" means any matter before The Agency in which the member or employee of The Agency has a direct or indirect interest that is in conflict or gives the appearance of conflict with the discharge of the member's or employee's duties;
 - (b) "Direct interest" means a pecuniary interest in the persons involved in a matter before the Agency. This interest applies to The Agency member or employee, The Agency member's or employee's relatives or an individual with whom or business as to which the member or employee has a pecuniary interest. For the purposes of this part, a relative is a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, or nephew by blood, marriage or adoption; and
 - (c) "Indirect interest" means a personal interest in the persons involved in a matter before the Agency that is in conflict or gives the appearance of conflict with the discharge of the Agency member's or employee's duties;
- (2) All Agency members shall annually review and sign a statement acknowledging the statute, rules and policies concerning conflicts of interest.

- (3) Any member, upon determining that a matter scheduled for consideration by The Agency results in a conflict with a direct interest, shall immediately notify the executive director and shall be recused from any deliberation of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter. The member shall join the public during the proceedings.
 - (a) Any member with an indirect interest shall publicly acknowledge such interest.
 - (b) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, the member shall follow the determination by the legal counsel for The Agency.
 - (c) A determination by The Agency or any court that a member of The Agency with a direct interest failed to provide notice and be recused from deliberations of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter, shall result in the member's automatic termination from The Agency and the position shall be considered vacant. The member shall not be eligible for appointment to any agency, board or commission of the state for a period of two (2) years.
 - (d) The executive director, upon determining that a conflict exists for the executive director or any member of the staff, shall notify the chair of The Agency and take such action as the chair prescribes and pursuant to this part.

Authority: T.C.A §§68-11-1605, 68-11-1602.

0720-8-.03 STAFF AND AGENCY DETERMINATIONS

- (1) Persons seeking information and/or guidance from The Agency or staff may receive such information and/or guidance by any of three methods: informal staff advice, staff determinations, or official Agency determinations.
- (2) Staff Advice. Staff members may give advice or guidance orally or in writing when requested. Such informal staff advice is merely the personal opinion of the staff member, and does not represent the position of The Agency or any member thereof. Such advice is not binding on The Agency, and creates no precedent.
- (3) Staff Determinations. A staff determination may be issued in writing, and signed by the executive director or general counsel. While a staff determination represents the considered position of staff, it does not necessarily represent the position of The Agency. A staff determination is not required to be officially adopted by The Agency, and creates no binding precedent on The Agency.
 - (a) When an inquiry is received which does not specifically request an official Agency determination, the executive director will determine whether the inquiry should be handled as a staff determination or as an Agency determination.
- (4) Agency Determinations. An Agency determination represents a formal opinion of The Agency. Agency determinations are initially analyzed and drafted by staff, and presented to the full Agency during a regularly scheduled Agency meeting. The Agency may then adopt, reject, or modify staff's recommendation.
 - (a) Written requests for Agency determinations should be received by the last business day of the preceding month to be included on The Agency's agenda for that month. In the discretion of the

executive director, the first inclusion of the request for determination on The Agency's agenda may be for the purpose of public notice: the request may then be placed on the agenda for the next succeeding Agency meeting for The Agency's consideration and decision. The executive director may waive the provisions of this sub-section, and place the request for determination before The Agency for consideration on the first inclusion on the agenda.

- (b) If the issue upon which a request for determination is based has been addressed by The Agency in prior determinations, or if the issue is otherwise not appropriate for a request for determination, staff will notify the person making the request and the request will not be placed on The Agency's agenda.

Authority: T.C.A. §§ 68-11-1605; 68-11-1607; 4-5-202.

0720-8-.04 ACCESS TO AGENCY RECORDS

- (1) Public Inspection. All public records of The Agency are available for inspection during normal business hours in accordance with reasonable office policies.
- (2) Copies. Persons who wish to obtain copies of records in excess of 15 pages must request such copies in writing. Copies will be furnished at a cost of \$.25 per page up to 200 pages. Copies in excess of 200 pages shall be charged a rate of \$1.00 per page: such \$1.00 per page rate shall apply to all pages requested and copied, not to only the pages exceeding 200 pages.
 - (a) In the absence of exceptional circumstances, as approved by the executive director, outside copying machines shall not be used.
 - (b) In no event shall anyone other than an Agency member or staff member be allowed to take original Agency records outside of The Agency's business office.
- (3) Audio Tapes. Recordings of meetings of The Agency are available for review and duplication. For each audio tape to be duplicated, the person requesting the duplication shall pay a fee of fifteen dollars (\$15.00).
- (4) Monthly Meeting Packet. Notwithstanding the copy fee schedule established in Subsection (2) of this Rule, persons desiring to receive copies of the Monthly Meeting Packet distributed to Agency Members may subscribe at the annual rate of \$1,500.00. Each Monthly Meeting Packet will include copies of the meeting Agenda, certificate of need application summaries, related reports of the Departments of Health and Mental Health and Developmental Disabilities, and reports and correspondence pertaining to agenda items as required.

Authority: T.C.A. §§68-11-1605; 4-5-202 and 10-7-506.

0720-8-.05 CONDUCTING AGENCY MEETINGS

- (1) The Agency will hold regularly scheduled, public meetings to consider applications for certificates of need, and to conduct other business.
- (2) Meetings of The Agency will be under the direction of the Chair, or in the Chair's absence or at his/her request, the Vice-Chair or other designated member as determined by the Chair. The meetings will be conducted in accordance with Robert's Rules of Order, except where otherwise provided by rule or statute.

- (3) All motions for the approval or disapproval of certificates of need and for Agency Determinations will be determined by roll call vote. Except where otherwise provided by rule or by statute, matters other than the approval or disapproval of a certificate of need and Agency Determinations may, at the discretion of the Chair or acting Chair, be determined by voice vote.
 - (a) Any Agency member present and voting on a matter which has been determined by a voice vote may request that a roll call vote be taken. In the event such a request is made, a roll call vote will be taken. No additional debate or discussion will be allowed on the matter, unless otherwise appropriate under applicable rules of parliamentary procedure.
 - (b) Conditions placed upon the granting of a certificate of need should be included in the motion for approval, or an amendment thereto, and determined in accordance with these rules.

Authority: T.C.A. §§68-11-1605; 68-11-1607; 4-5-202.

0720-8-.06 BEGINNING OF REVIEW CYCLES

Review cycles shall begin on the first day of each month.

Authority: T.C.A. §§68-11-1605; 68-11-1607; 4-5-202.

**CHAPTER 0720-9
DEFINITIONS**

NEW RULES

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0720-9-.01 Definitions

0720-9-.01 DEFINITIONS. The following terms shall have the following meanings.

- (1) "Adult psychiatric" means inpatient mental health services provided to patients 18 years of age and over.
- (2) "Agency" means the Tennessee Health Services and Development Agency.
- (3) "Ambulatory surgical treatment center" means any institution, place or building devoted primarily to the performance of surgical procedures on an outpatient basis.
- (4) "Capital expenditure" in relation to a proposed establishment of, modification, renovation, or addition to a health care institution, means an expenditure by or on behalf of a health care institution which, under generally accepted accounting principals, is not properly chargeable as an expense of operation and maintenance. Any series of expenditures, each less than the threshold, but which when taken together are in excess of the threshold, directed toward the accomplishment of a single goal or project, requires a certificate of need. Any series of related expenditures made over a twelve (12) month period will be presumed to be a single project.

- (a) Establishment, modifications, additions, or renovations. In calculating the capital expenditure for establishment, modifications, additions, or renovations, "capital expenditure" is the amount per construction bid or total amount of invoices for the single project excluding major medical equipment.
 - (b) Equipment. The cost of major medical equipment over the monetary threshold of T.C.A. §68-11-1607 is not considered when determining the amount of capital expenditures for determining whether the monetary threshold of T.C.A. §68-11-1607 is met for an establishment, modification, addition, or renovation. The cost of all other equipment, whether fixed or moveable, is considered. The cost of major medical equipment is considered in calculating the amount of the examination fee. The cost for such fixed and moveable equipment includes, but is not necessarily limited to, taxes, government fees, assessments, and any other fees, assessments or charges directly associated with the acquisition of the equipment.
 - (c) Lease, loan, or gift. In calculating the value of a lease, loan, or gift, the "cost" is the fair market value of the above-described expenditures. In the case of a lease, the cost is the fair market value of the lease or the total amount of the lease payment, whichever is greater.
- (5) "Certification period" means the period of time beginning on the date of issuance of a certificate of need and ending on the expiration date of a certificate of need, as established by statute, rule, or order of The Agency.
 - (6) "Change of location" means a change of the specific location of an existing institution, facility, service, or piece of major medical equipment, in part or in its entirety. The following activities involving a home care organization are a change of location of a health care institution, and require a certificate of need:
 - (a) The addition of one or more counties to the licensed service-area of a home care organization;
 - (b) The change of location of a parent office to a different county.
 - (7) "Child and adolescent psychiatric" means inpatient mental health services provided to patients under 18 years of age.
 - (8) "Executive director" means the chief administrative officer of The Agency and the appointing authority, exercising general supervision over all persons employed by The Agency, as defined in T.C.A. §68-11-1606.
 - (9) "Expiration date" is the date upon which a certificate of need expires and becomes null and void. The expiration date may be established by statute, by rule, or by order of The Agency.
 - (10) "Home health service" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
 - (11) "Hospital" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
 - (12) "Long-term categories" includes nursing home services, regardless of the length of stay, and any other health service which is intended or reasonably expected to result in an average length of stay of 21 days or longer.
 - (13) "Major medical equipment" - "Cost."
 - (a) As used in T.C.A. §68-11-1602. "major medical equipment" means any single item of equipment, or a series of components with related functions, within the definition and cost threshold set

forth the referenced statute, and which costs more than the amounts determined under T.C.A. §68-11-1607.

- (b) The cost of major medical equipment includes all costs, expenditures, charges, fees and assessments which are reasonably necessary to put the equipment into use for the purposes for which the equipment was in-tended. Such costs specifically include, but are not necessarily limited to, the following:
 - 1. maintenance agreements, covering the expected useful life of the equipment;
 - 2. federal, state, and local taxes and other government assessments; and
 - 3. installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding.
 - (c) Any individual components or a piece of medical equipment with related functions, which are purchased over a 12 month period shall be considered toward the cost of the piece of major medical equipment.
 - (d) If the acquisition is by lease, the cost is either the fair market value of the equipment, or the total amount of the lease payments, whichever is greater
- (14) "Mental health hospital" means a public or private hospital or facility or part of a hospital or facility equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance, as licensed by the Department of Mental Health and Developmental Disabilities.
- (15) "Mental retardation institutional habilitation facility" means a facility which offers on a regular basis health related services to individuals with mental retardation who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but, because of physical or mental condition require residential care and services (more than room and board) and involves health related care under the supervision of a physician. Such a facility also offers an intensive program of habilitative services, as licensed by the Department of Mental Health and Developmental Disabilities.
- (16) "Neonatal intensive care unit" means a special care unit staffed and equipped to provide professional intensive treatment for the care of newborns with severe or complicated illnesses and/or high-risk newborn infants, staffed by a neonatologist and specialized nurses and in which bassinets are used as licensed beds.
- (17) "Not directly related to patient care" may include the following types of single, isolated expenditures:
- (a) Telephone systems;
 - (b) Non-clinical data processing systems;
 - (c) Heating and/or air conditioning systems;
 - (d) Energy conservation devices;
 - (e) Parking facilities;
 - (f) Roof repairs;
 - (g) Medical office buildings;

- (h) Warehouses; and
 - (i) Cafeterias.
- (18) "Nursing home" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (19) "Outpatient diagnostic center" means any agency, institution, facility, or place that does not already have, or is not under the auspices of an agency, institution, facility, or place that has a license issued by the Board for Licensing Health Care Facilities and which performs outpatient diagnostic procedures with mobile or fixed equipment for the services of lithotripsy, computerized tomography, positron emission tomography, magnetic resonance imaging, mammography, cardiac catheterization, percutaneous transluminal coronary angioplasty, nuclear medicine scans, vascularembolization, or stereotactic procedures. The definition of "Outpatient Diagnostic Center" does not include a private physician or dental practice wherein any of the equipment listed above is used exclusively to serve patients of the private physician or dental practice and no patients from other private physician or dental practices or health care facilities are referred there solely for diagnostic procedures.
- (20) "Person" where the context requires, may refer to any natural person, legal entity, facility, or institution, as defined in T.C.A. §68-11-1602.
- (21) "Recuperation center" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (22) "Residential hospice" is as defined in T.C.A. Title 68, Chapter 11, Part 2.
- (23) "Service area" means the county or counties, or portions thereof, representing a reasonable area in which a health care institution intends to provide services and in which the majority of its service recipients reside.
- (24) "Substantive amendment" as used in T.C.A. §68-11-1607 means any amendment which has the effect of increasing the number of beds, square footage, cost, or other elements which are reasonably considered in the discretion of The Agency to be integral components of the application. A reduction of the above referenced components may be considered a substantive amendment if the amendment and supporting documentation are not received by the staff and Agency in a timely manner, necessary to allow The Agency to make an informed decision. Nothing in this rule shall be interpreted as limiting The Agency's authority to approve or deny all or part of any given application.

Authority: T.C.A. §§ 68-11-1605; 4-5-202.

**CHAPTER 0720-10
CERTIFICATE OF NEED PROGRAM – SCOPE AND PROCEDURES**

NEW RULES

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0720-10-.01	Private Professional Practice Exemption	0720-10-.04	Emergency Certificate of Need
0720-10-.02	Activities Requiring Notification - Miscellaneous Provisions	0720-10-.05	Consent Calendar
0720-10-.03	Standard Procedures for Certificate of Need	0720-10-.06	Expiration, Revocation, and Modification of Issued Certificates

0720-10-.01 PRIVATE PROFESSIONAL PRACTICE EXEMPTION

- (1) Seeking licensure of a place, building, or facility as a health care institution is inconsistent with an assertion that such place, building, or facility is being occupied “exclusively as the professional practice office” of a medical doctor, osteopath, or dentist. Therefore, any person who seeks licensure as a health care institution as set forth in T.C.A. § 68-11-1602 must secure a certificate of need.
- (2) To establish or maintain a health care institution that does not require licensure, a certificate of need is required unless the place, building, or facility is occupied exclusively as the professional practice of a medical doctor, osteopathic doctor, or dentist. In determining whether the professional practice exemption is met, The Agency may consider all relevant factors, including but not limited to, form of facility ownership, types of service reimbursement sought and/or received, patient referral sources, advertising/marketing efforts, and whether the private practitioner retains complete responsibility for management and business control.
- (3) The “private professional practice” exemption has no application in regard to initiation of services, acquisition of major medical equipment, or other actions requiring a certificate of need. The applicability of the exemption, as defined above, is limited to the definition of a “health care institution.”

Authority: T.C.A. §§ 68-11-1605; 68-11-1602; 68-11-1607; 4-5-202.

0720-10-.02 ACTIVITIES REQUIRING NOTIFICATION – MISCELLANEOUS PROVISIONS

- (1) Any nursing home which increases its bed complement pursuant to the ten (10) bed/ten (10)% provision of T.C.A. §68-11-1607 must have the additional beds licensed within one year of Agency receipt of notice of the increase. If such beds are not licensed within such one (1) year period, the notice shall be void, and the increase in bed complement shall not be implemented.
- (2) Any hospital with fewer than one hundred (100) licensed beds, which increases its bed complement pursuant to the ten (10) bed provision of T.C.A. §68-11-1607 must have the additional beds licensed within one (1) year of Agency receipt of the notice of the increase. If the additional beds are not licensed within such one (1) year period, the notice shall be void, and the increase in bed complement shall not be implemented.
- (3) For purposes of the nursing home ten (10) bed/ten (10)% exemption, and the hospital ten (10) bed exemption, the one (1) year period after which the next such exempted change may be initiated at the facility shall begin on the date when the most recent exempted bed change at the facility is actually licensed. For the purposes of this exemption, “licensed bed capacity” shall mean that number of beds actually licensed in a facility at the time the exempted increase or decrease is initiated.
- (4) Any person claiming the exemption from certificate of need requirements for the acquisition of major medical equipment on the basis that such equipment is a replacement or upgrade of existing equipment, shall provide notice to The Agency at least sixty (60) days prior to the purchase on a form provided by The Agency.
- (5) Notice of a change of ownership occurring within two (2) years of the date of initial licensure of a health care institution must be provided to The Agency within thirty (30) days of the effective date on forms provided by The Agency.

Authority: T.C.A. §§68-11-1605; 68-11-1607; 68-11-1602; 4-5-202.

0720-10-.03 STANDARD PROCEDURES FOR CERTIFICATE OF NEED

- (1) Application Form. Each application will be filed using standard application forms provided by The Agency. The applicant must provide all information requested in the application forms.
- (2) Letters of Intent.
 - (a) Each Letter of Intent shall be filed using standard forms provided by The Agency. The applicant must provide all information requested in the Letter of Intent form. The applicant must fully comply with all instructions contained in the Letter of Intent form provided by The Agency.
 - (b) Each Letter of Intent for home care organization applications shall also specify all counties in the proposed service area.
 - (c) Any Letter of Intent which contains insufficient information may be deemed void. The Letter of Intent may be refiled, but it is subject to the same requirements as an original Letter of Intent.
 - (d) Simultaneous with its filing with The Agency, the Letter of Intent shall be published for one day in a newspaper of general circulation in the county where the proposed project is to be located. The Letter of Intent shall be published in the Legal Notice section in a space which should be no smaller than four (4) column inches. Publication must be in the same form and format as the Publication of Intent form provided by The Agency.
 1. For the purpose of these rules, "simultaneous" means that publication should, if possible, occur on the same day as filing. A day or two delay between filing and publication will not necessarily void the Letter of Intent, but both filing and publication must occur between the 1st and 10th day of the month preceding the beginning of the review cycle. If the last day for filing the Letter of Intent is a Saturday, Sunday or State holiday, filing must occur on the last preceding regular business day. If both filing and publication do not occur within the time period, the Letter of Intent will be null and void, and the applicant will be notified in writing.
 2. For the purpose of these rules, "newspaper of general circulation" means a publication with the following characteristics:
 - (i) is regularly issued at least once a week;
 - (ii) has a second class mailing privilege;
 - (iii) includes a Legal Notice Section;
 - (iv) is not fewer than four (4) pages in length;
 - (v) has been published continuously during the immediately preceding one year period;
 - (vi) is published for dissemination of news of general interest; and
 - (vii) is circulated generally in the county in which it is published.
 3. In any county where a publication fully complying with this definition does not exist, the Executive director is authorized to determine appropriate publication to receive any required Letter of Intent. A newspaper which is engaged in the distribution of news of interest to a particular interest group or other limited group of citizens, is not a "newspaper of general circulation."

4. In the case of an application for or by a home care organization, the Letter of Intent shall be published in each county in which The Agency will be licensed or in a regional newspaper which qualifies as a newspaper of general circulation in each county. In those cases where the Letter of Intent is published in more than one newspaper, the earliest date of publication shall be the date of publication for the purpose of determining the date for the timely filing of the application. Both the Letter of Intent and the application must specify the counties to be served.
- (3) Simultaneous Review. Those persons desiring simultaneous review for a certificate of need for which a Letter of Intent has been filed shall file a Letter of Intent with The Agency and the original applicant, and publish the Letter of Intent simultaneously in a newspaper of general circulation, as those terms are defined in sub-paragraph (2)(d), above, in the same county as the original applicant within ten (10) days after publication by the original applicant. The Executive director or his/her designee will determine whether applications are to be reviewed simultaneously.
 - (a) The applicant seeking simultaneous review shall, at the time the Letter of Intent is filed with The Agency, also file a verified statement certifying it has complied with the procedural requirements for simultaneous review and evidence that the Notice was received by The Agency business office and the original applicant within ten (10) days after publication by the original applicant.
 - (b) In addition to the procedural requirements, the following factors may be considered by the Executive director in determining whether the applications are to be reviewed as appropriate for simultaneous review:
 1. Similarity of services area.
 2. Similarity of location;
 3. Similarity of facilities; and
 4. Similarity of service to be provided.
 - (c) If, at the time an application is filed for simultaneous review, there is already another application filed for simultaneous review against the original application, the second application seeking simultaneous review may be simultaneously reviewed against both the original application and the other application seeking simultaneous review.
 - (d) The order in which applications filed for simultaneous review will be placed on the agenda will be determined by the order in which the Letters of Intent were received in The Agency office.
 - (e) Any application which is determined to not meet the criteria for a "simultaneous review" shall be null and void. The application may be re-filed for a subsequent review cycle, but is subject to the same requirements as an original application.
 - (4) Applications.
 - (a) All applications must be filed in triplicate with The Agency within five (5) days after publication by the applicant, and must be accompanied by the filing fee. The date of filing shall be the actual date of receipt. If the last day for filing an application falls on a Saturday, Sunday, or State holiday, the application, to be timely, must be filed on the last preceding regular business day.

- (b) Failure by the applicant to file an application within five (5) days after publication of the Letter of Intent in accordance with (a) above shall render the Letter of Intent, and hence the application, void.
 - (c) When an application is received at The Agency office, it must include an initial non-refundable filing fee, as provided elsewhere in these rules. Review for completeness shall not begin prior to the receipt of the filing fee.
 - (d) Each application that is accompanied by the applicable filing fee will be reviewed for completeness by Agency staff.
 - 1. If it is deemed complete, The Agency will acknowledge receipt and notify the applicant that the review period will begin as of the date specified in the notification. Deeming complete means only that all questions and requests for information have been responded to in some reasonable manner. Deeming complete shall not be construed as validating the sufficiency of the information provided for the purposes of addressing the criteria under the applicable statutes, rules, and other guidelines.
 - 2. If the application is incomplete, responses to requests for supplemental information by the staff must be completed by the applicant and filed at The Agency office within sixty (60) days of the written request by Agency staff. Failure of the applicant to meet this deadline will result in the application being considered withdrawn and returned to the contact person. Resubmittal of the application must be accomplished in accordance with Rule 0720-10-.03 and requires an additional filing fee.
 - (e) An application for certificate of need shall not be amended in a substantive way by the applicant after being filed with The Agency. If the application is amended in a substantive manner varying from the Letter of Intent or the original application filed with The Agency, the application may be deemed void. This Rule does not prohibit correction of clerical errors in the application.
- (5) Examination Filing Fee.
- (a) The amount of the initial fee shall be equal to \$2.25 per \$1,000 of the estimated capital expenditure involved, but in no case shall this fee be less than \$3,000 nor more than \$45,000.
 - (b) Any unpaid balance of litigation costs previously assessed against the applicant by the Tennessee Health Facilities Commission or the Tennessee Health Services and Development Agency, or any related entity of the applicant, may be offset against any filing fees paid. An application will not be deemed complete until the full filing fee, as well as such off set amounts, are paid in full.
 - (c) A final fee will be determined upon The Agency's receipt of the final project report. The amount of the final fee shall be the difference between the initial fee and the total fee based on actual final project costs, as such fee is calculated based on \$2.25 per \$1,000 of project costs, but in no case shall the total fee be less than \$3,000 nor more than \$45,000.
- (6) Distribution of Applications. The Agency will promptly forward a copy of each application deemed complete to the Department of Health, or to the Department of Mental Health and Developmental Disabilities, and in doing so will fix at the date on which the review process established by statute and these regulation will commence.
- (7) Withdrawal of Applications. An application may be withdrawn at any time by the applicant.

- (8) Beginning of the Review Cycle. The review cycle for each application shall begin on the first day of the appropriate month after the application has been deemed complete by the staff of The Agency.
- (9) Reviewing Agencies' Actions on Applications.
 - (a) The Department of Health, or the Department of Mental Health/Mental Retardation, shall within seven (7) days from the receipt of a completed application give notice to The Health Services and Development Agency of its receipt in writing. The appropriate reviewing agency shall expeditiously review all applications in a consistent manner and conduct such studies and inquiries thereon as may be determined necessary by the appropriate reviewing agency, by The Health Services and Development Agency's rules, or upon request of The Health Services and Development Agency, to enable it to make a report to The Health Services and Development Agency. Applicants must comply promptly with all reasonable requests made by the appropriate reviewing agency, for additional information for the purpose of this review. Copies of said studies and all correspondence related to the application shall be forwarded to The Health Services and Development Agency by the reviewing agency.
 - (b) Within sixty (60) days (or thirty (30) days where the application is on the consent calendar), of the date fixed by The Health Services and Development Agency pursuant to Rule 0720-10-.03(4), the reviewing agency shall file its official written report with The Health Services and Development Agency. A copy of this report shall be forwarded by the reviewing agency to the applicant, and to any other person requesting one.
- (10) Reviewing Agency's Report to The Health Services and Development Agency. The reviewing agency's report shall be made in a form prescribed by The Health Services and Development Agency which shall address at a minimum each of the applicable criteria for certificate of need set forth in the statute, rules, and at the state health plan. The reviewing agency shall clearly set forth any planning methodologies, data bases, and resource materials utilized in making its findings. The reviewing agency will comply with all requests of The Health Services and Development Agency in the specific application of the guidelines in the state health plan. The reviewing agency may include other information it deems appropriate and informative. The report shall address the following:
 - (a) The applicant's compliance with the criteria found in Agency Rules 0720-11;
 - (b) A verification of the methodologies provided by the applicant to meet the criteria specified in (a), as well as identification of any additional methodologies that would further demonstrate compliance with the criteria;
 - (c) An assessment of the applicant's compliance with any applicable Guidelines for Growth; and
 - (d) An analysis of any information received from the TennCare Bureau as to the previous, current and proposed TennCare participation or non-participation of the applicant and any affiliate(s) involved with the project
- (11) An applicant may provide written supporting information to its application during the review cycle. Further, the applicant will have the right to respond in writing to the report made by the reviewing agency. The reviewing agency and the Health Services and Development Agency shall receive a copy of the applicant's response to The Agency report not less than ten (10) days prior to the Health Services and Development Agency meeting.
- (12) Holder of certificate of need. A certificate of need will normally be issued to the person who owns the real property of the institution or facility concerned, provided, however, that a certificate may be issued to:

- (a) The lessee or permittee of the property in cases where the property is not specifically designed for the provision of health care services and the lessor is not in the regular business of providing space for health care activities;
- (b) The lessee of the property where the terms of the lease convey long-term control of the facility to the lessee;
- (c) A management company where the terms of the management agreement convey long-term control of the facility to the management company, and management company also has significant responsibility for implementing and completing the project; or
- (d) The person who directly provides equipment or facilities for Health care activities when that person is not the owner of the property or facility.

Authority: T.C.A. §§68-11-1605; 68-11-1607; 68-11-1608; 68-11-1609; and 4-5-202.

0720-10-.04 EMERGENCY CERTIFICATE OF NEED

- (1) Where an unforeseen event necessitates action of a type requiring a certificate of need and the public health, safety, or welfare would be unavoidably jeopardized by compliance with the standard procedures for application and granting of a certificate of need, The Agency may issue an emergency certificate of need.
- (2) An emergency certificate of need may be issued upon request of the applicant when the Executive director and officers of The Agency concur, after consultation with the appropriate reviewing agency. Prior to an emergency certificate of need being granted, the applicant must publish notice of the application in a newspaper of general circulation, and Agency members must be notified by Agency staff of the request.
- (3) A decision regarding whether to issue an emergency certificate of need will be considered at the next regularly scheduled Agency meeting unless the applicant's request is necessitated by an event that has rendered its facility, equipment or service inoperable. In such case, The Agency's Chair and Vice-Chair may act immediately to consider the application for an emergency certificate of need.
- (4) Said certificate is valid for a period not to exceed one hundred twenty (120) days: when the applicant has applied for a certificate of need under standard Agency procedures, an extension of the emergency certificate of need may be granted.
- (5) For the purpose of this rule, the term "unforeseen event" means an event which could not be reasonably foreseen and which significantly affects the habitability of the facility or operation of the service including but not limited to fire, flood, acts of God, and the failure of fixed equipment such as heating, ventilating and air conditioning equipment, elevators, boilers, electrical transformers and switch gears, sterilization equipment, water supply and other utility connections

Authority: T.C.A. §68-11-1605.

0720-10-.05 CONSENT CALENDAR

- (1) Each monthly meeting's agenda will be available for both a consent calendar and a regular calendar.

- (2) In order to be placed on the consent calendar, the application must not be opposed by anyone having legal standing to oppose the application, and the executive director must determine that the application appears to meet the established criteria for granting a certificate of need. Public notice of all applications intended to be placed on the consent calendar will be given.
- (3) As to all applications which are placed on the consent calendar, the reviewing agency shall file its official report with The Agency within thirty (30) days of the beginning of the applicable review cycle.
- (4) If opposition by anyone having legal standing to oppose the application is stated in writing prior to the application being formally considered by The Agency, it will be taken off the consent calendar and placed on the next regular agenda. Any member of The Agency may state opposition to the application being heard on the consent calendar, and if reasonable grounds for such opposition are given, the application will be removed from the consent calendar and placed on the next regular agenda.
 - (a) For purposes of this rule, the “next regular agenda” means the next regular calendar to be considered at the same monthly meeting.
- (5) Any application which remains on the consent calendar will be individually considered and voted upon by The Agency.

Authority: T.C.A. §§68-11-1605; 68-11-1608; 4-5-202.

0720-10-.06 EXPIRATION, REVOCATION, AND MODIFICATION OF ISSUED CERTIFICATES

- (1) Prolonged certification periods and extensions of expiration dates of certificates are disfavored, and will be sparingly granted. Any request for a prolonged certification period must be clearly set forth in the application in order to be considered. A request for an extension of the expiration date must be made in writing to The Agency and filed prior to the first day of the month in which the application is to be considered by The Agency, and will be processed in accordance with policies established by staff.
- (2) Prolonged certification period. A prolonged certification period will be granted only where exceptional circumstances are shown to exist which make completion of the project within the time limits prescribed by statute unachievable using all reasonable means.
- (3) Extension of expiration date due to unforeseen occurrence. Extension of the expiration date of an issued certificate may be granted where some unforeseen and reasonably unavoidable occurrence causes a delay which makes completion of the project by the original expiration date unachievable using all reasonable means.
 - (a) Occurrences which may justify an extension of the expiration date include, without limitation, fire, flood, explosion, catastrophic weather conditions, riots or other civil disturbances, and similar occurrences. A court order enjoining the project, or otherwise significantly interfering with the completion of the project, may, in the discretion of The Agency, constitute grounds for an extension of, the expiration date. Ordinarily, lack of adequate or accurate planning and/or financial difficulties will not justify an extension of the expiration date.
 - (b) All requests for extension of the expiration date must be filed in triplicate at The Agency office and be accompanied by a filing fee. The filing fee shall be an amount which bears the same ratio to the initial examination fee submitted with the application, as the requested extension of time bears to the original certification period.

- (4) Extension of expiration date due to appeal. In the event of a proper and timely appeal of The Agency's decision to grant a certificate of need, the certification period will be automatically extended, and the expiration date will be automatically stayed, during the pendency of the appeal.
 - (a) The time period of the extension/stay will be equal to the period of time beginning with the date the petition is received at The Agency's office, and ending with the effective date of the decision of the appellate court of last resort, or the expiration of the time period available for seeking further appellate review (where such appellate review is not sought), whichever occurs first.
 - (b) At the conclusion of the appellate process, as described in subparagraph (4)(a) above, a revised certificate of need, reflecting the new expiration date, may be issued upon request of the certificate holder.
- (5) In order to show substantial and timely progress in seeking an extension of the expiration date, the certificate holder must show that the project was on schedule and could reasonably have been completed by the expiration date, but for the unforeseen and unavoidable occurrence.
 - (a) By way of illustration, but not limitation, if construction had not proceeded beyond the footing stage at three months prior to the expiration date, substantial and timely progress would likely not be shown.
- (6) The Agency will conduct an annual review of progress of each project for which a certificate of need has been granted. The certificate holder shall timely respond to staff requests for information in connection with such progress reviews, and otherwise cooperate with staff in such progress reviews. As part of this progress review, the certificate holder shall submit to The Agency a copy of any signed agreements with TennCare managed care organizations executed after the date the certificate of need was granted, or a status update on any pending negotiations with such entities, within six (6) months after issuance of the certificate of need, and again at twelve (12) months. The certificate holder must show that it is making substantial and timely progress in implementing the project. In the absence of such a showing, The Agency may initiate proceedings to revoke the certificate of need.
- (7) Special corrections and revised certificates. Any issued certificate of need containing typographical errors or requiring similar clerical changes on its face, should be reported by the certificate holder and/or may be recalled by The Agency or staff. In the event of such non-substantive changes, or technical errors or omissions the executive director may issue a "revised" certificate in correct form. The certificate holder shall surrender the original certificate prior to its reissuance in corrected form.
 - (a) Examples of errors and omissions and other nonsubstantive changes which may be made through a revised certificate include:
 1. A typographical error;
 2. A change in the name of an institution or facility;
 - (i) This refers only to a change in the "doing business as" name, not to a change of ownership. Any change of ownership occurring prior to licensure of a proposed new health care institution is covered in paragraph nine (9) of this rule.
 - (ii) A change of ownership of a health care institution occurring within two years of initial licensure requires notice to The Agency, but no revised or modified certificate of need will be issued.

- 3. An extension of the expiration date due to a completed appeal; and
 - 4. Other non-substantive changes as approved by the executive director;
- (b) Except for changing the expiration date due to a completed appeal as provided above, a revised certificate pursuant to this subdivision shall not be construed as extending the expiration date.
- (8) Modifications and/or addendums to issued certificates. In the event a certificate holder wishes to make substantive changes relating to the scope, cost, or duration of the project, written request must be made to, and formally approved by, The Agency in its discretion. If approved, such changes may be reflected in either the issuance of a modified certificate of need, or by the issuance of an addendum to the original certificate. If the request is denied, The Agency's decision is final, and no appeal shall be allowed.
- (a) Changes included within the provisions of this subdivision may include, but are not limited to, cost increases or decreases, downscaling or increasing the scope or square footage of a project, requests for an extension of the expiration date and changes of ownership where allowed by law and Agency rules. Generally, such changes resulting in either a ten (10) percent increase or decrease shall be presumed substantive, though there will be instances where changes greater than ten (10) percent would not be substantial and instances where changes less than ten (10) percent would be substantive, depending upon the totality of the circumstances. In no event will any change in cost of less than \$1,000 be deemed a substantive cost modification. In no event will any change which would independently require a certificate of need be considered for a modification or addendum. Multiple requests for modifications of a certificate of need, and such other modifications which in the discretion of The Agency would have significantly impacted public participation in The Agency's consideration of the original application, may be considered by The Agency as requiring a separate certificate of need.
1. Certain changes of ownership ("change of control"), prior to licensure constitutes the transfer of a certificate of need, and will render the certificate null and void, as provided in T.C.A. §68-11-1620.
- In addition to the circumstances constituting a change of ownership ("change of control") as specified in T.C.A. §68-11-1620, the termination of interest of over 50% of the membership of a non-profit corporation constitutes a change of ownership/change of control. If the change is made from a non-profit, membership corporation to a non-profit, non-membership corporation, there is no change of control if the boards of directors of the corporations are interlocking to the extent that there is no actual change of control of the corporate powers of the corporation which will hold the certificate of need.
- (b) Any certificate holder seeking a modification or addendum must make a formal request in writing to The Agency, in accordance with policies adopted by The Agency staff. Such written request must be accompanied by the appropriate supporting documentation justifying the requested modification. Simultaneously with the submission of such written request, the certificate holder shall also file written notice with all parties who sought simultaneous review, filed competing applications, or who opposed the original application. Where an extension of the expiration date is sought, the request must be accompanied by the fee referred to elsewhere in these rules.
- (c) A change of site may not be approved through a modification or addendum; a separate certificate of need is required.

- (9) Any certificate holder seeking the removal of a condition which was placed on the certificate of need may make an application in writing to The Agency, in accordance with policies adopted by The Agency staff. At the time it makes such written application with The Agency, the certificate holder shall also file written notice with all parties who sought simultaneous review, filed competing applications, or who opposed the original application, and shall publish notice thereof in a newspaper of general circulation. In order to show “good cause” for removing a condition, the certificate holder has the burden of showing that circumstances have significantly changed, which necessitate the removal of the condition. Mere disagreement or dissatisfaction with the condition will normally not be considered to be good cause for removing the condition.
- (a) Application to The Agency for the addition of a specialty to an issued certificate that is limited to either a single specialty or specific multiple specialties shall be made by the filing of a new certificate of need application form, in addition to the requirements above, though removal of a condition is what is sought.

Authority: T.C.A. §§68-11-1605; 68-1-106; 68-11-1609; 68-11-1611; 68-11-1620; 4-5—202.

**CHAPTER 0720-11
CERTIFICATE OF NEED PROGRAM – GENERAL CRITERIA**

NEW RULES

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0720-11-.01 General Criteria for Certification of Need

0720-11-.01 GENERAL CRITERIA FOR CERTIFICATE OF NEED. The Agency will consider the following general criteria in determining whether an application for a certificate of need should be granted:

- (1) Need. The health care needed in the area to be served may be evaluated upon the following factors:
- (a) The relationship of the proposal to any existing applicable plans;
 - (b) The population served by the proposal;
 - (c) The existing or certified services or institutions in the area;
 - (d) The reasonableness of the service area;
 - (e) The special needs of the service area population, including the accessibility to consumers, particularly women, racial and ethnic minorities, TennCare participants, and low-income groups;
 - (f) Comparison of utilization/occupancy trends and services offered by other area providers;
 - (g) The extent to which Medicare, Medicaid, TennCare, medically indigent, charity care patients and low income patients will be served by the project. In determining whether this criteria is met, the Agency shall consider how the applicant has assessed that providers of services which will operate in conjunction with the project will also meet these needs.
- (2) Economic Factors. The probability that the proposal can be economically accomplished and maintained may be evaluated upon the following factors:

- (a) Whether adequate funds are available to the applicant to complete the project;
 - (b) The reasonableness of the proposed project costs;
 - (c) Anticipated revenue from the proposed project and the impact on existing patient charges;
 - (d) Participation in state/federal revenue programs;
 - (e) Alternatives considered; and
 - (f) The availability of less costly or more effective alternative methods of providing the benefits intended by the proposal.
- (3) Contribution to the Orderly Development of Adequate and Effective Healthcare Facilities and/or Services. The contribution which the proposed project will make to the orderly development of an adequate and effective health care system may be evaluated upon the following factors:
- (a) The relationship of the proposal to the existing health care system (for example: transfer agreements, con-tractual agreements for health services, the applicant's proposed TennCare participation, affiliation of the project with health professional schools);
 - (b) The positive or negative effects attributed to duplication or competition;
 - (c) The availability and accessibility of human resources required by the proposal, including consumers and related providers;
 - (d) The quality of the proposed project in relation to applicable governmental or professional standards.
- (4) Applications for Change of Site. When considering a certificate of need application which is limited to a request for a change of site for a proposed new health care institution, The Agency may consider, in addition to the foregoing factors, the following factors:
- (a) Need. The applicant should show the proposed new site will serve the health care needs in the area to be served a least as well as the original site. The applicant should show that there is some significant legal, financial, or practical need to change the proposed new site.
 - (b) Economic factors. The applicant should show that the proposed new site would be at least as economically beneficial to the population to be served as the original site.
 - (c) Contribution to the orderly development of health care facilities and/or services. The applicant should address any potential delays that would be caused by the proposed change of site, and show that any such delays are outweighed by the benefit that will be gained from the change of site by the population to be served.
- (5) Certificate of need conditions. In accordance with T.C.A. § 68-11-1609, The Agency, in its discretion, may place such conditions upon a certificate of need it deems appropriate and enforceable to meet the applicable criteria as defined in statute and in these rules.

Authority: T.C.A. §§68-11-1605; 68-11-1609; 4-5-202.

CHAPTER 0720-12
CERTIFICATE OF NEED PROGRAM—APPLICATION,
DISCLOSURE OF INFORMATION AND REPORTING REQUIREMENTS

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0720-12-.01 STANDARD APPLICATION

- (1) Application for a certificate of need shall be made on form(s) provided by The Agency. The applicant must provide all information requested in the application forms. The information which may be required in the application form(s) includes, but is not necessarily limited to, the following:
 - (a) Facility identification, including legal interests and status, operator and owners;
 - (b) Detailed project description;
 - (c) Detailed project cost data;
 - (d) Detailed disclosure of anticipated financing mechanism;
 - (e) Project operating costs and revenues, patient charges, and occupancy rate; and
 - (f) Information on the project's relationship to public needs and the existing health service system.
 - (g) A copy of any signed agreement between the applicant and TennCare managed care organizations; if a signed agreement has not been executed prior to The Agency's consideration of the application, the applicant shall provide a list of any such organizations with whom the applicant is negotiating, or a statement that the applicant does not intend to contract with any TennCare managed care organization(s).
- (2) The accuracy of the information provided must be attested to by the responsible party or his agent in a notarized statement. Providing false incorrect, misleading, or fraudulent information is grounds for revocation of the certificate of need.

Authority: T.C.A. §§68-11-1605; 68-11-1607; Section 10; 4-5-202.

0720-12-.02 REPORT OF BED INCREASES NOT REQUIRING A CERTIFICATE OF NEED

- (1) Any nursing home or hospital which is increasing the number of its licensed beds without the necessity of obtaining a certificate of need, as provided by law, shall report such activity on forms provided by The Agency.

- (2) Any nursing home or hospital reporting such increases must provide all information requested in the form(s). Information required to be provided by the forms may include, but not be limited to, the following:
 - (a) Facility identification;
 - (b) Number of licensed beds prior to the request;
 - (c) Number of beds being increased; and
 - (d) Anticipated date of licensure/certification.

Authority: T.C.A. §§68-11-1605; 68-11-1607; 4-5-202.

0720-12-.03 REPLACEMENT OR UPGRADE OF MAJOR MEDICAL EQUIPMENT

- (1) Any person claiming an exemption from the certificate of need requirements for the replacement or upgrade of major medical equipment shall report the replacement or upgrade on forms provided by The Agency.
- (2) Any person claiming the exemption must provide all information requested in the form(s). Information which may be required by the form(s) may include, but not be limited to, the following:
 - (a) A description of the original equipment, and of the replacement or upgraded equipment;
 - (b) The cost of the original equipment and of the replacement or upgraded equipment, and whether the acquisition was by purchase, lease, or otherwise;
 - (c) The expected useful life of the original equipment, and of the replacement or upgraded equipment;
 - (d) The date of acquisition of the original equipment, and of the replacement or upgraded equipment; and
 - (e) The owner of the original equipment; and of the replacement or upgraded equipment.

Authority: T.C.A. §§68-11-1605; 68-11-1607; 4-5-202.

0720-12-.04 REPORT OF CHANGE OF OWNERSHIP OF LICENSED INSTITUTIONS

- (1) Notice of a change of ownership of a health care institution, occurring within two years of the date of initial licensure, must be reported to The Agency in writing. Any person reporting such a change of ownership must provide all information requested by The Agency. Such information which may be required may include, but not be limited to, the following:
 - (a) Identification of the current owner of the health care institution;
 - (b) Identification of the proposed new owner of the health care institution;
 - (c) Identification of the health care institution, the ownership of which is proposed to be transferred; and,
 - (d) The effective date of the proposed change of ownership.

Authority: T.C.A. §§68-11-1605; 68-11-1607; 4-5-202.

0720-12-.05REGISTRATION OF EQUIPMENT

- (1) Ownership of computerized axial tomographers, lithotripters, magnetic resonance imagers, linear accelerators, positron emission tomography, and any other piece of equipment specified by law, must be made on forms provided by The Agency within ninety (90) days of acquisition of the equipment.
- (2) The person registering such equipment must provide all information requested in the form(s) provided by Agency staff. Information which may be required by the form(s), may include, but not be limited to, the following:
 - (a) Identification of the owner of such equipment;
 - (b) The location of the equipment, including facility identification;
 - (c) Whether the acquisition is by purchase, lease, or otherwise;
 - (d) The date of delivery of the equipment; and
 - (e) The expected useful life of the equipment.
- (3) All such equipment shall be filed on an annual inventory survey developed by Agency staff. The survey shall include, but not be limited to, the identification of the equipment and utilization data according to source of payment. The survey shall be filed no later than thirty (30) days following the end of each state fiscal year. The Agency is authorized to impose a penalty not to exceed fifty dollars (\$50) for each day the filing of the survey is late.

Authority: T.C.A. §§68-11-1605;68-11-1607; Section 10; 4-5-202.

CHAPTER 0720-13 RULES OF PROCEDURE FOR HEARING CONTESTED CASES

NEW RULES

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0720-13-.01GENERAL PROCEDURES FOR CONTESTED CASES

- (1) Except as otherwise provided herein, all contested cases before The Agency will be conducted in accordance with T.C.A. §§ 4-5-301 et seq., 68-11-1610, with these Rules, and with the Rules of the Secretary of State Chapter 1360-4-1.

- (2) Eligibility to appeal. Any person with legal standing, and who meets the requirements of T.C.A. §68- 11-1610 may petition The Agency for a contested case hearing to appeal the grant or denial of a certificate of need.
- (3) Filing of petitions. Petitions for contested case hearings must be filed with The Agency in triplicate pursuant to the Rule 0720-8-.01 of the Health Services and Development Agency, and must be received at The Agency offices within fifteen (15) days of the date of The Agency's meeting at which the action which is the subject of the petition took place. Simultaneous with filing, the petitioner shall serve copies of the petition on all other parties in the matter. The petitioner shall have the burden of proving, by a preponderance of the evidence, that a certificate of need should be granted or should be denied.
- (4) Intervention. Any person with legal standing and who meets the requirements of T.C.A. §4-5-310 may file petition for intervention in a contested case.

Authority: T.C.A. §§68-11-1605; 68-11-1610; 4-5-223; 4-5-310; 4-5-314; 4-5-202.

0720-13-.02 CONTESTED CASES BEFORE ADMINISTRATIVE JUDGES SITTING ALONE

- (1) With the exception of declaratory orders referenced below, all petitions for a contested case hearing shall routinely be referred to the Administrative Procedures Division, Department of State for hearing by an Administrative Judge sitting alone on behalf of The Agency. The Agency retains the right, however, to hear any particular contested case on its own behalf.
- (2) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the petitioner and other parties with the exception of The Agency shall bear the cost for all court reporters and transcriptions. The original transcript and one copy of the transcript for each member of The Agency shall be provided to The Agency by the other parties, if the case is to be reviewed by the full Agency. Other costs of the proceeding, including the Administrative Judge's costs shall be assessed by The Agency in accordance with T.C.A §68-11-1610.
- (3) Unless agreed otherwise by the parties, at the beginning of all contested case hearings, Agency counsel shall provide a summary of what the case is about, description of the project, and introduce into evidence the application, the reviewing agency's report and the staff Summary, and the minutes of The Agency reflecting the action that was taken before The Agency. In no event shall this provision mean that The Agency is a neutral party in contested cases, or that its counsel represents the interests of any party other than The Agency.
- (4) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the party petitioning for such hearing shall present its case first, unless the parties agree otherwise.

Authority: T.C.A §§68-11-1605; 68-11-1610; 4-5-223; 4-5-310; 4-5-314; 4-5-202.

0720-13-.03 REVIEW OF INITIAL ORDERS

- (1) An Initial Order issued by an Administrative Judge, sitting alone, may be reviewed by The Agency pursuant to T.C.A §§4-5-301, et seq., 68-11-1610, these Rules, and the Rules of the Secretary of State Chapter 1360-4-1. The Agency may, in its discretion, decline to exercise any review of an Initial Order issued by an Administrative Judge, in which event the Initial Order issued by an Administrative Judge shall become a Final Order as provided by the Administrative Procedures Act.

- (2) In such a review proceeding, The Agency's review is strictly limited to the record which was developed before the Administrative Judge. No additional evidence is to be received or considered by The Agency.
- (3) Such a review proceeding is in the nature of appellate review. Each party will be given the opportunity to file a brief which should specify what action the party maintains The Agency should take on the Initial Order. The Agency may place reasonable page limitations on such briefs.
- (4) In such a review proceeding, each party will normally be limited to oral argument of thirty (30) minutes in length, including rebuttal.
- (5) At the conclusion of the review proceeding The Agency may decide that the Initial Order should be adopted in its entirety, or it may make such modifications to the Initial Order as it deems appropriate.
 - (a) Alternatively, The Agency may take the matter under advisement, and subsequently reconvene, after reasonable notice to the parties, to hold its public deliberations and to render a Final Order.

Authority: T.C.A. §§68-11-1605; 68-11-1610; 4-5-223; 4-5-310; 4-5-314; 4-5-202.

0720-13-.04DECLARATORY ORDERS

- (1) Any affected person may petition The Agency for a declaratory order, as provided in T.C.A. §4-5-223, as to the interpretation, validity, or applicability of a statute or rule within the primary jurisdiction of The Agency. Such petition shall be filed with The Agency in triplicate, and must specifically identify the statute or rule at issue, and the nature of the ruling sought.
- (2) A petition for declaratory order is viewed as primarily involving questions of law and statutory or rule interpretation. The parties should strive to limit the amount of evidence presented, and to stipulate the facts to the extent possible.
- (3) In the event the petition for declaratory order arises out of The Agency's action on a specific project or issue, the petition for declaratory order shall be filed within thirty (30) days of the date of The Agency meeting at which the action at issue was taken.
- (4) No person may file a petition for declaratory order as to any action or issue which is the subject of a pending or completed contested case proceeding involving the same person.

Authority: T.C.A. §§68-11--1605; 68-11-1610; 4-5-223; 4-5-3 10; 4-5-3 14; 4-5-202.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2004. (09-31)

HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

There will be a hearing before the Tennessee Health Services and Development Agency to consider the promulgation of rules on behalf of the Tennessee Health Services and Development Agency pursuant to T.C.A. § 4—5—203 and 4—5—204, and T.C.A. § 68—11—1605. 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 Rooms 12, 14 of the Legislative Plaza, 6th Avenue North, Nashville, TN, at 10:00 A.M. C.D.T. on the 19th day of November, 2004.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Tennessee Health Services and Development Agency 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 agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the agency's ADA Coordinator at the Tennessee Health Services and Development Agency, 500 Deaderick Street, Suite 850, Andrew Jackson State Office Building, Nashville, Tennessee 37243, and (615)741-2364.

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

Sue Kerley, 500 Deaderick Street, Suite 850, Andrew Jackson State Office Building, Nashville, Tennessee 37243, Tennessee Health Services and Development Agency, and (615)741-2364.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2004. (09-29)

BOARD OF MEDICAL EXAMINERS - 0880

There will be a hearing before the Tennessee Board of Medical 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, 63-6-101, 63-6-209, 63-6-214, 63-6-224, 63-6-233, and Public Chapter 704 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 Tennessee Room of the Cordell Hull Building located at 425 5th Avenue North, Nashville, TN at 8:45 a.m. (CST) on the 16th 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, 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 0880-2-.04 Licensure Process—International Medical School Graduates, is amended by adding the following language as new subparagraph (3) (d) and renumber the remaining subparagraphs accordingly:

- (3) (d) The school's admission standards must meet or exceed those of medical schools accredited by the Liaison Committee on Medical Education (LCME).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-2-.16 Telemedicine Licensure, is amended by deleting subparagraph (6) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (6) (e) shall read:

- (6) (e) Licensed/registered physicians or surgeons of other states when called in consultation by a Tennessee licensed/registered physician as provided by T.C.A. §63-6-204 (a) (3).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-209.

Rule 0880-2-.19 Continuing Education, is amended by adding the following language as new paragraph (4) and renumbering the present paragraph (4) as paragraph (5):

- (4) If a licensee provides disciplinary case review at the request of the Department, and submits a written report of his or her conclusions regarding such disciplinary case review, the reviewing licensee shall receive one (1) hour of continuing medical education credit for each hour spent reviewing the materials and preparing the report. A maximum of ten (10) hours credit shall be awarded for reviewing disciplinary case materials during the two (2) calendar years (January 1 – December 31) that precede the licensure renewal year.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-233.

Rule 0880-5-.08 Maintaining Certification, Renewal, Retirement and Reinstatement, is amended by adding the following language as new subparagraphs (3) (c) and (3) (d) and renumbering the present subparagraph (3) (c) as subparagraph (3) (e):

- (3) (c) To reactivate an expired certification submit, along with the Board's Reactivation Application, documentation of successful completion of the continuing education requirements provided in rule 0880-5-.09 for all the calendar years (January 1 – December 31) that the certification was expired that precede the calendar year during which the reactivation is requested; or
- (3) (d) To reactivate a retired certification submit, along with the Board's Reactivation Application, documentation of successful completion of twenty (20) hours of continuing education, as provided in rule

0880-5-.09, during the two (2) calendar years (January 1 – December 31) that precede the calendar year during which the reactivation is requested.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-224.

Rule 0880-5-.09 Continuing Education, is amended by adding the following language as new subparts (3) (d) 1. (ii) and renumbering the remaining subparts accordingly and is further amended by adding the following language as new subpart (3) (d) 1. (vii):

- (3) (d) 1. (ii) Tennessee Radiological Society
- (3) (d) 1. (vii) American College of Radiology

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-224.

Rule 0880-5-.12 Supervision, is amended by deleting the language of that rule in its entirety and substituting instead the following new language, so that as amended the rule shall read as follows:

- (1) Before being authorized to perform any x-ray procedure or operate any x-ray equipment in a physician’s office, the physician shall place a copy of the person’s renewal certificate in the person’s personnel file to prove the person being authorized has the appropriate certification required for either or both the procedure being performed and/or the equipment being used and that such certification is current.
- (2) The employing physician(s), or a physician designated by the employing physician(s) as a substitute supervisor, shall exercise close supervision and assume full control and responsibility for the services provided by any person certified under this chapter of rules employed in the physician(s)’ practice. That supervision, control and responsibility, except when it involves contrast imaging or involves sedation, does not require the physical presence of the physician(s) at all times at the site where the services are being provided. However, it does require that the physician(s) have his/her primary medical practice physically located within the boundaries of the state of Tennessee and that he/she be capable of being physically present at the site where the services are being provided within a reasonable time depending upon the type of x-ray being performed and the severity of the medical complications that may arise from that type of x-ray.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, and 63-6-224.

NEW RULES

**CHAPTER 0880-9
GENERAL RULES AND REGULATIONS GOVERNING RADIOLOGIST ASSISTANTS**

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0880-9-.01	Definitions	0880-9-.06	Certification Renewal, Retirement and Reactivation
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0880-9-.01 DEFINITIONS. As used in this Chapter of rules the following terms and acronyms will have the meaning ascribed to them:

- (1) A.R.R.T. - American Registry of Radiologic Technologists.
- (2) Full Certification - Certification obtained by submitting certification issued by the A.R.R.T. which will enable the holder to perform any and all procedures or functions in a physician's office.
- (3) Radiologist – A physician licensed by the Tennessee Board of Medical Examiners who is certified or eligible to be certified by the American Board of Radiology.
- (4) Radiologist Assistant Certification - Certification obtained by submitting proof of A.R.R.T. certification as a radiologist assistant which will enable the holder to perform any and all radiologist assistant procedures or functions as defined in Section 0880-5-.12 in a radiology practice or radiologist's office.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-224, and Public Chapter 704 of the Public Acts of 2004.

0880-9-.02 FEES. The following fees are nonrefundable and apply to all applicants and certificate holders. All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Medical Examiners.

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|---|----------|
| (1) Application and Certification Fee - To be paid by all applicants at the time an application is filed. | \$ 50.00 |
| (2) Biennial Certification Renewal Fee - To be paid by all persons holding certification. | \$ 50.00 |
| (3) State Regulatory Fee (biennial) - To be paid with initial applications and with renewal applications. | \$ 10.00 |
| (4) Late Renewal - Reactivation Fee | \$100.00 |

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-6-224, and Public Chapter 704 of the Public Acts of 2004.

0880-9-.03 QUALIFICATIONS FOR CERTIFICATION. TO BE CERTIFIED AS A RADIOLOGIST ASSISTANT (RA), AN APPLICANT MUST:

- (1) On or after July 1, 2007, be a graduate of a radiologist assistant educational program and a radiologist directed clinical preceptorship culminating in the award of a baccalaureate degree or its equivalent from an institution offering a program accredited by an entity recognized by the American Registry of Radiologic Technologists for certification purposes; and
- (2) be currently certified by the American Registry of Radiologic Technologists as a radiologist assistant (RA); and

- (3) be currently certified by the American Registry of Radiologic Technologists as a radiologic technologist (RT); and
- (4) be currently certified in advanced cardiac life support (ACLS); and
- (5) possess current and unencumbered full certification as an x-ray operator by the Tennessee Board of Medical Examiners, pursuant to Rule 0880-5-.04.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-224, and Public Chapter 704 of the Public Acts of 2004.*

0880-9-.04 PROCEDURES FOR CERTIFICATION

- (1) An applicant shall submit with the application a copy of his/her A.R.R.T. identification card which must be current, in good standing, and shows certification as a radiologist assistant (RA) and as a radiologic technologist (RT).
- (2) An applicant shall submit with the application a copy of his or her certification in advanced cardiac life support (ACLS) which must be current and in good standing.
- (3) An applicant shall submit with the application a form provided by the Board containing a physician's credentials as a radiologist, acknowledgement of the physician's responsibility to supervise the radiologist assistant, and the signature of the supervising physician.
- (4) On or after July 1, 2007, an applicant shall cause a transcript to be submitted directly from the school to the Board Administrative Office. The transcript must show graduation from a radiologist assistant educational program, and that a baccalaureate degree or its equivalent from an institution offering a program accredited by an entity recognized by the American Registry of Radiologic Technologists for certification purposes, which includes a radiologist directed clinical preceptorship has been conferred, and contains the official seal of the institution.
- (5) An applicant shall submit with the application the Application and Certification Fee and the State Regulatory Fee as provided in Rule 0880-9-.02
- (6) An applicant shall submit with the application a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.
- (7) Application review and decisions shall be governed by Rule 0880-2-.07 (1) through (5).

Authority: *T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-6-224, and Public Chapter 704 of the Public Acts of 2004.*

0880-9-.05 EXAMINATION FOR CERTIFICATION.

- (1) The Board adopts as its certification examination the radiologist assistant examination provided by the A.R.R.T.
- (2) A.R.R.T. certification will substitute for all examinations required by the Board and will be the basis for radiologist assistant certification.
- (3) It is the applicant's responsibility to apply directly to the examination agency for admission to the examinations. The Board does not process applications for examination.

- (4) The passing score shall be determined by the A.R.R.T.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-224, and Public Chapter 704 of the Public Acts of 2004.

0880-9-.06 CERTIFICATION RENEWAL, RETIREMENT AND REACTIVATION.

- (1) All certificate holders must renew their certificates to be able to legally continue in practice. Renewal is governed by the following:
- (a) The due date for renewal is its expiration date which is the last day of the month in which a certificate holder's birthday falls pursuant to the Division of Health Related Boards "biennial birthdate renewal system" contained in rule 1200-10-1-.10.
 - (b) Methods of Renewal - Renewal may be accomplished by one of the following methods:
 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at: www.tennessee.gov.
 2. Paper Renewals - Certificate holders who have not renewed their authorization online via the Internet will have a renewal application form mailed to them at the last address provided by them to the Board prior to the expiration date of their current certificate. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal. To be eligible for renewal a certificate holder must submit to the Division of Health Related Boards on or before the certificate's expiration date the following:
 - (i) A completed and signed renewal application form.
 - (ii) The Biennial Renewal and State Regulatory Fees as provided in Rule 0880-9-.02.
 - (c) Any renewal application received after the expiration date but before the last day of the month following the expiration date must be accompanied by the Late Renewal - Reactivation Fee provided in Rule 0880-9-.02.
 - (d) Any individual who fails to comply with the renewal rules and/or notifications sent to them concerning failure to timely renew shall have their certificates processed pursuant to rule 1200-10-1-.10.
 - (e) Anyone submitting a signed renewal form, electronically or otherwise, which is found to be fraudulent or untrue may be subject to disciplinary action.
 - (f) Any certificate holder who receives notice of failure to timely renew pursuant to rule 1200-10-1-.10, and who, on or before the last day of the month following the month in which the certificate expires, executes and files in the Board's administrative office an affidavit of retirement pursuant to paragraph (2) of this rule may have their certificate retired effective on their certificate's expiration date.
- (2) Certificate Retirement
- (a) Certificate holders who wish to retain their certification but not actively practice will not be required to comply with the certification renewal process by doing the following:

1. Obtain from, complete and submit to the Board Administrative Office an affidavit of retirement form.
 2. Submit any documentation which may be required by the form to the Board Administrative Office.
- (b) Upon successful application for retirement of certification with completion and receipt of all proper documentation to the Board's satisfaction, the Board shall register the certificate as retired. Any person who has a retired certificate may not practice in Tennessee.
- (3) Reactivation - Any certificate holder whose certificate has been retired or processed pursuant to rule 1200-10-1-.10 for failure to timely renew may re-enter active practice by doing the following:
- (a) Submit a written request for a Reactivation Application to the Board Administrative Office; and
 - (b) Fully complete and submit the Board's Reactivation Application along with payment of:
 1. For those reactivating a retired certificate the Biennial Certification Renewal Fee.
 2. For those who are reactivating a certificate processed pursuant to rule 1200-10-1-.10 for failure to timely renew all past due Biennial Certification Renewal Fees and the Late Renewal – Reactivation Fee; and
 - (c) To reactivate an expired certification submit, along with the Board's Reactivation Application, documentation of successful completion of the continuing education requirements provided in rule 0880-9-.07 for all the calendar years (January 1 – December 31) that the certification was expired that precede the calendar year during which the reactivation is requested; or
 - (d) To reactivate a retired certification submit, along with the Board's Reactivation Application, documentation of successful completion of twenty-four (24) hours of continuing education, as provided in rule 0880-9-.07, during the two (2) calendar years (January 1 – December 31) that precede the calendar year during which the reactivation is requested.
 - (e) If requested, after review by the Board, a designated Board member, or the Board's consultant appear before either the Board, or a duly constituted panel of the Board, or another Board member, or the Board Designee for an interview regarding continued competence in the event of certification retirement, administrative revocation or other practice inactivity in excess of two (2) years and meet such other requirements the Board feels necessary to establish current levels of competency.
- (3) Renewal issuance and reactivation decisions pursuant to this rule may be made administratively subject to review by the Board, any Board member or the Board Designee.

Authority: *T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-6-101, 63-6-224, and Public Chapter 704 of the Public Acts of 2004.*

0880-9-.07 CONTINUING EDUCATION.

- (1) Continuing Education - Hours Required

- (a) Each person certified by the Board must biennially attend and complete twenty-four (24) hours of radiological related continuing education in courses approved by the Board.
 - (b) The Board approves courses for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a two (2) year period toward the required hourly total regardless of the number of times the course is attended or completed by any individual certificate holder.
 - (c) The hours required by this rule may be used to satisfy the continuing education requirements of Rule 0880-5-.09
- (2) Continuing Education - Proof of Compliance
- (a) Each person must, on a Board provided form, check a box and/or enter signature which indicates attendance and completion of the required continuing education hours and that such hours were obtained during the preceding two (2) calendar years.
 - (b) Each person must retain proof of attendance and completion of all continuing education courses. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the course is completed. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process.
- (3) Continuing Education - Course Approval
- (a) Courses to be offered for credit toward the required continuing education hours must, unless otherwise provided, receive prior approval from the Board.
 - (b) Prior approval of a course may be obtained by submitting the following information to the Board Administrative Office at least thirty (30) days prior to the scheduled date of the course.
 1. a course description or outline.
 2. names of all lecturers.
 3. brief resume of all lecturers.
 4. number of hours of educational credit requested.
 5. date of course.
 6. copies of materials to be utilized in the course.
 7. how verification of attendance is to be documented.
 - (c) Continuing education courses may be presented in any of the following formats:
 1. Lecture.
 2. Audiovisual - with successful completion of a written post experience examination to evaluate material retention.

3. Correspondence - with successful completion of a written post experience examination to evaluate material retention.
 4. Any combination of the above.
- (d) The following courses need not receive prior approval and shall constitute Board approved continuing education courses:
1. Courses sponsored or approved by any of the following organizations:
 - (i) Tennessee Society of Radiologic Technologists
 - (ii) Tennessee Radiological Society
 - (iii) Tennessee Medical Association
 - (iv) American Medical Association
 - (v) American Society of Radiologic Technologists
 - (vi) American Registry of Radiologic Technologists
 - (vii) American College of Radiology
 2. Educational courses sponsored by an accredited school of medicine or radiological health. If such course is taken for or assigned quarter or semester credit hours, three (3) quarter hours or equivalent semester hours shall be equivalent to fifteen (15) continuing education hours. No credits will be counted for courses failed.
- (e) Individual Board members and the Board's designee are vested with the authority to approve continuing education courses submitted in compliance with this rule. All such approvals must be presented to the full Board for ratification.
- (4) Violations
- (a) Any person who falsely attests to attendance and completion of the required hours of continuing education may be subject to decertification.
 - (b) Any person who fails to obtain the required continuing education hours may be subject to decertification.
 - (c) Education hours obtained as a result of compliance with the terms of an informal settlement or Board Orders in any disciplinary action shall not be counted toward the continuing education hours required to be obtained by Rule 0880-9-.07 (1) (a).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-224, and Public Chapter 704 of the Public Acts of 2004.

0880-9-.08 RADIOLOGIST ASSISTANT SCOPE OF PRACTICE AND ROLE DELINEATION.

- (1) Before being authorized to perform any x-ray procedure or operate any x-ray equipment in a physician's office, the supervising staff radiologist shall place a copy of the person's renewal certificate in the person's personnel file to prove the person being authorized has the appropriate certification required for either or both the procedure being performed and/or the equipment being used and that such certification is current.
- (2) The radiologist assistant shall evaluate the day's schedule of procedures with the supervising staff radiologist and determine where the radiologist assistant's skills will be best utilized.
- (3) After demonstrating competency the radiologist assistant when ordered to do so by the supervising radiologist may:
 - (a) perform selected procedures under the direct supervision of a radiologist including static and dynamic fluoroscopic procedures;
 - (b) assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures;
 - (c) participate in patient management including acquisition of additional imaging for completion of the examination and record documentation in medical records;
 - (d) evaluate image quality, make initial image observations and communicate observations to the supervising radiologist; and
 - (e) administer intravenous contrast media or other prescribed medications.
- (4) The radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.
- (5) The radiologist assistant shall adhere to the code of ethics of the American Registry of Radiologic Technologists and to national, institutional and/or departmental standards, policies and procedures regarding the standards of care for patients.
- (6) For the purposes of this rule, "direct supervision" means the radiologist must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of all procedures. "Direct supervision" does not mean that the supervising radiologist must be present in the room when the procedure is performed.
- (7) A certificate holder may be disciplined in the same manner, for the same causes and pursuant to the same procedures as any physician pursuant to T.C.A. 63-6-214.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-224, and Public Chapter 704 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 September, 2004. (09-20)

BOARD OF NURSING - 1000

There will be a hearing before the Tennessee Board of Nursing to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-7-207. 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 22nd 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 1000-1-.13, Unprofessional Conduct and Negligence, Habits or Other Cause, is amended by deleting subparagraph (2) (w) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (w) shall read:

- (2) (w) Aggravated burglary, as in T.C.A. 39-14-403;

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-115, and 63-7-207.

Rule 1000-1-.13, Unprofessional Conduct and Negligence, Habits or Other Cause, is amended by amended by adding the following language as new subparagraph (2) (x) and renumbering the remaining subparagraphs accordingly.

- (2) (x) Especially Aggravated Burglary, as in T.C.A. 39-14-404;

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-115, and 63-7-207.

Rule 1000-1-.15, Scope of Practice, 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) Determination and Pronouncement of Death – Pursuant to the restrictions and guidelines found in T.C.A. § 68-3-511, a registered nurse may make an actual determination and pronouncement of death for:
 - (a) residents of a hospice or a nursing home; and
 - (b) patients in a hospital; and
 - (c) patients who were receiving the services of a licensed home care organization at the time of death; and

- (d) patients who were receiving the services of a program for all-inclusive care for the elderly (PACE) which is a permanent Medicare provider as approved by the Centers for Medicare and Medicaid Services.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-207, 68-3-511, 68-11-201, and Public Chapter 646 of the Public Acts of 2004.

Rule 1000-2-.13, Unprofessional Conduct and Negligence, Habits or Other Cause, is amended by deleting subparagraphs (2) (v), (2) (w) and (2) (z) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (v), (2) (w) and (2) (z) shall read:

- (2) (v) Burglary, as in T.C.A. 39-14-402;
- (2) (w) Aggravated burglary, as in T.C.A. 39-14-403;
- (2) (z) Sexual Exploitation of a Minor, as in T.C.A. 39-17-1003;

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-115, and 63-7-207.

Rule 1000-2-.13, Unprofessional Conduct and Negligence, Habits or Other Cause, is amended by adding the following language as new subparagraph (2) (x) and renumbering the remaining subparagraphs accordingly.

- (2) (x) Especially Aggravated Burglary, as in T.C.A. 39-14-404;

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-115, and 63-7-207.

Rule 1000-4-.06, Fees, is amended by adding the following language as new subparagraph (1) (d) and renumbering the present subparagraph (1) (d) as subparagraph (1) (e):

- (1) (d) Advanced Practice Nurse Certificate Reinstatement \$100.00

Authority: T.C.A. §§4-5-202, 4-5-204, 63-7-126, and 63-7-207.

NEW RULES

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1000-1-.18 Free Health Clinic and Volunteer Practice Requirements 1000-2-.17 Free Health Clinic and Volunteer Practice Requirements

1000-1-.18 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any nurse licensed to practice in this state or any other state who has not been disciplined by any nursing 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. For nurses who have not been licensed in Tennessee, comply with all provisions of paragraph (1) of rule 1000-1-.02 and, if applicable, the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 3. 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 nurse 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 nurse holding a Special Volunteer License may not do any of the following:
1. Practice nursing 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 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 1000-1-.03, except those requiring the payment of any fees; and
 2. The rules governing continuing nursing competence as provided by rule 1000-1-.14; 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 nurse 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 nurse 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 nurse 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 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.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-201, 63-6-701 through 707, 63-7-102, 63-7-104, 63-7-105, 63-7-207, and Public Chapter 579 of the Public Acts of 2004.

1000-2-.17 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any nurse licensed to practice in this state or any other state who has not been disciplined by any nursing 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. For nurses who have not been licensed in Tennessee, comply with all provisions of paragraph (1) of rule 1000-1-.02 and, if applicable, the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 3. 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 nurse 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 nurse holding a Special Volunteer License may not do any of the following:
 1. Practice nursing 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 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 1000-1-.03, except those requiring the payment of any fees; and
 2. The rules governing continuing nursing competence as provided by rule 1000-1-.14; 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 nurse 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 nurse 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 nurse 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 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.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-201, 63-6-701 through 707, 63-7-102, 63-7-108, 63-7-109, 63-7-207, 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 8th day of September, 2004.
(09-18)

**THE TENNESSEE PRIVATE INVESTIGATION
AND POLYGRAPH COMMISSION - 1160**

There will be a hearing before the Tennessee Private Investigation and Polygraph Commission to consider the promulgation of amendments to rules and pursuant to Tenn. Code Ann. '62-27-105(a)(1). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. '4-5-204, and will take place in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m.(CST) on the 19th day of November, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or 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, ADA Coordinator, Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243, at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Donna Hancock, Executive Director, Tennessee Private Investigation and Polygraph Commission, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243, telephone (615) 532-9160.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1160-1
ADMINISTRATION AND ENFORCEMENT**

AMENDMENTS

Rule 1160-1-.02 Applications is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.02 APPLICATIONS.

- (1) An applicant for a polygraph examiner's license or an internship permit shall file an application with the Commission with the following:
 - (a) A non-refundable application fee to obtain a polygraph examiner's license or an internship permit required by rule 1160-1-.08;
 - (b) A 2" x 3" or 3" x 3" photograph of the applicant; and
 - (c) A full set of fingerprints made at a law enforcement agency by an agent or officer of such agency. The fingerprint card shall be entirely completed in the presence of such agent or officer.
- (2) The Commission shall only consider those applications that are complete. A completed application is one in which all of the application questions are answered and the application is accompanied by the items in paragraph (1) above. An applicant shall file a complete application with the Commission within ninety (90) days of the initial application date or the Commission shall return the incomplete application to the applicant.

Authority: T.C.A.. §§62-27-105(a)(1), 62-27-108, 62-27-111(2) and 62-27-112(a).

Rule 1160-1-.03 Examinations is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.03 EXAMINATIONS.

- (1) A polygraph examiner license applicant may take the licensing examination only after the applicant has fulfilled the requirements in Tenn. Code Ann. §62-27-107(1) through (6) and submitted an application with the Commission.
- (2) A polygraph examiner intern may take the examination for a polygraph examiner's license during his or her internship period.
- (3) Polygraph examiner and intern applicants shall schedule their respective examinations a minimum of ten (10) days prior to any scheduled or requested examination date.
- (4) A polygraph examiner or intern applicant shall pay the examination fee prior to sitting for the examination.

Authority: T.C.A.. §§62-27-105(a)(1), 62-27-107(a)(7) and 62-27-111(d).

Rule 1160-1-.04 Intern Sponsors is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.04 INTERN SPONSORS.

The intern sponsor shall have the intern conduct at least fifty (50) polygraph examinations during the twelve (12) month internship period.

Authority: T.C.A.. §§62-27-105(a)(1) and 62-27-111(f).

Rule 1160-1-.05 Course of Study for Internship is amended by deleting paragraph (6) in its entirety and substituting in its place the following language so that, as amended, the paragraph shall read as follows:

- (6) During the remaining ten (10) months of an intern's internship period, the sponsor, at least one (1) time per week, will be physically present to observe the intern administer polygraph examinations and the sponsor will be available to assist the intern with any problems encountered relating to polygraph matters.

Authority: T.C.A.. §§62-27-105 and 62-27-111.

Rule 1160-1-.06 Professional Standards is amended by deleting the text of the rule in its entirety and substituting in its place the following language so that, as amended, the rule shall read as follows:

1160-1-.06 PROFESSIONAL STANDARDS.

- (1) Before beginning an examination, a polygraph examiner shall:

- (a) give the examinee a reasonable explanation of the polygraph technique;
- (b) notify the examinee of the nature of the examination;
- (c) notify the examinee of his or her right to consult an attorney;
- (d) if the examination is an employment examination, present to the examinee the following form:

Employment Examination

This examination will not cover any of the following areas, unless the examination is administered as a result of an investigation of illegal activity in such area, and the inability to pose relevant questions in relation to such illegal activity would be detrimental to such investigation:

- (i) religious beliefs or affiliations;
- (ii) beliefs or opinions regarding racial matters;
- (iii) political beliefs or affiliations;
- (iv) beliefs, affiliations or lawful activities regarding unions or labor organizations;
- (v) sexual preferences or activities;
- (vi) any disability covered by the Americans with Disabilities Act; or
- (vii) actions or activities more than five (5) years preceding the date of the examination, except for felony convictions and violations of the Tennessee Drug Control Act, codified in title 39, chapter 17, part 4.

The questions that will be asked on this examination are:

(List of Questions)

I certify that I have read this form, and that the polygraph examiner whose signature appears below has reviewed the questions listed above with me prior to the examination.

(Signature of Examinee)

(Signature of Examiner)

(Date)

- (e) require the examinee to sign and receive the following form(s):

Consent to Polygraph Examination

(A) I understand that I am voluntarily consenting to take this polygraph examination; that I have

- (b) has been afforded a reasonable opportunity to explain any deceptive reactions which are evident on the charts unless the examinee is represented by legal counsel and such counsel requests the results be given to counsel rather than the examinee.
- (8) A polygraph examiner shall request the examinee to sign his or her name to the last polygraph chart conducted.
- (9) A polygraph examiner shall ensure that the inquiry, investigation, and interview in a pre-employment or employment verification examination shall be restricted to questions relevant to the examinee's suitability for the position of employment.

Authority: T.C.A.. §§62-27-105(a)(1), 62-27-123 and 62-27-125.

Rule 1160-1-.08 Fees for Licenses is amended by adding the following language as new paragraph (1) and renumbering the subsequent paragraphs accordingly:

- (1) An applicant for a polygraph examiner's license or an internship permit shall pay a nonrefundable application fee of fifty dollars (\$50.00) to accompany the application submitted to the Commission.

Authority: T.C.A.. §§62-27-105(a)(1) and 62-27-112(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of september, 2004. (09-28)

BOARD OF EXAMINERS IN PSYCHOLOGY - 1180

There will be a hearing before the Tennessee Board of Examiners in Psychology to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-11-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 10th 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 1180-1-.01, Definitions, is amended by deleting subparagraph (23) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (23) (a) shall read:

- (23) (a) Temporary License – A time-limited license issued by the board to an applicant who wishes to practice and has met all other licensure requirements except successful completion of the written examination and/or the ethics and jurisprudence examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-207, 63-11-208, 63-11-209, and 63-11-210.

Rule 1180-1-.03, Fees, is amended by deleting paragraphs (1) (d) and (2) (f) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1) (d) and (2) (f) shall read:

- (1) (d) Ethics and Jurisprudence Examination \$200.00
- (2) (f) Ethics and Jurisprudence Examination Fee – A non-refundable fee to be paid when applying for initial licensure and each time thereafter if an applicant retakes the Board’s Ethics and Jurisprudence Examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-207, 63-11-208, 63-11-209, and 63-11-210.

Rule 1180-1-.05, Renewal of License or Certification, is amended by deleting part (2) (a) 4. in its entirety and substituting instead the following language, so that as amended, the new part (2) (a) 4. shall read:

- (2) (a) 4. If the license has been expired for more than five (5) years, successfully pass the jurisprudence and ethics examination, pay the jurisprudence and ethics examination exam fee as provided in rule 1180-1-.03, and obtain six (6) months of supervision.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-207, 63-11-208, 63-11-209, 63-11-210, and 63-11-218.

Rule 1180-1-.07, Retirement and Reactivation of License or Certificate, 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) A person whose license or certificate has been retired and who has not practiced for over five (5) years may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure or certification, by submitting to the Board administrative office a written request for licensure or certification reactivation, the license or certificate renewal fee, the state regulatory fee, the late renewal fee, proof of successful completion of forty (40) hours of continuing education as provided in rule 1180-1-.08, and by passing the jurisprudence and ethics examination if required, paying the jurisprudence and ethics examination exam fee as provided in rule 1180-1-.03, and obtaining six (6) months of supervision.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-207, 63-11-208, 63-11-209, 63-11-210, and 63-11-218.

Rule 1180-1-.08, Continuing Education, is amended by deleting subparagraph (1) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e) shall read:

- (1) (e) Twenty-two (22) CE hours of the forty (40) hours required in subparagraph (b) may be received from Type I, II, or III programs as provided by this rule. Three (3) hours of the twenty-two (22) hours required in this subparagraph shall pertain to:
 - 1. Tennessee Code Annotated, Title 63, Chapter 11; and
 - 2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapters 1180-1, 1180-2, 1180-3, and 1180-4; and
 - 3. The version of the “Ethical Standards” which are part of the “Ethical Principles of Psychologists and Code of Conduct” published by the American Psychological Association (A.P.A.), and approved by the A.P.A.’s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, and 63-11-218.

Rule 1180-2-.03, Procedures for Licensure, is amended by deleting paragraph (11) in its entirety and substituting instead the following language, so that as amended, the new paragraph (11) shall read:

- (11) Under no circumstances shall the ethics and jurisprudence examination be waived.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-208, 63-11-209, and 63-11-210.

Rule 1180-2-.04, Examinations, is amended by deleting paragraphs (2), (3) and (4) in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (5) (b) in its entirety and substituting instead the following language, so that as amended, the new paragraphs (2), (3) and (4), and the new subparagraph (5) (b) shall read:

- (2) Ethics and jurisprudence examination. All applicants for licensure must successfully complete the Board’s ethics and jurisprudence examination as a prerequisite to licensure.
 - (a) The Board shall mail an ethics and jurisprudence examination to all applicants for licensure who have paid the Ethics and Jurisprudence Examination Fee and who have passed the EPPP.
 - (b) The applicant shall complete the ethics and jurisprudence examination and return it to the Board’s administrative office.
 - (c) The scope and content of the examination shall be determined by the Board but limited to
 - 1. Tennessee Code Annotated, Title 63, Chapter 11; and

2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapters 1180-1, 1180-2, 1180-3, and 1180-4; and
 3. The version of the “Ethical Standards” which are part of the “Ethical Principles of Psychologists and Code of Conduct” published by the American Psychological Association (A.P.A.), and approved by the A.P.A.’s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.
- (e) Copies of the applicable statutes, regulations, and information on how to acquire the “Ethical Standards” are available upon request from the Board’s administrative office.
 - (f) The format of the examination shall be “open-book.”
 - (g) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the ethics and jurisprudence exam.
- (3) The Board may delay a decision on eligibility to take the written examination(s) and/or the ethics and jurisprudence examination for any candidate for whom the Board has requested additional information.
 - (4) The Board shall schedule a meeting within ninety (90) days following the completion of all examinations at which time the Board will consider completed applications and examination results for the purpose of licensure.
 - (5) (b) If the Board determines that the applicant has failed to successfully complete the ethics and jurisprudence examination, the applicant will be mailed another examination and he/she 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, 63-11-104, 63-11-206, 63-11-208, 63-11-209, and 63-11-210.

Rule 1180-2-.05, Temporary License, is amended by deleting parts (2) (b) 3. and (2) (b) 4. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (d) in its entirety and substituting instead the following language, so that as amended, the new parts (2) (b) 3. and (2)(b) 4., and the new subparagraph (3) (d) shall read:

- (2) (b) 3. Failure of the second (2nd) ethics and jurisprudence examination.
- (2) (b) 4. Expiration of the twelve (12) month period established by law.
- (3) (d) The temporary license becomes invalid upon failure of the second (2nd) ethics and jurisprudence examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-208, 63-11-209, 63-11-210, and 63-11-211.

Rule 1180-2-.06, Provisional License, is amended by deleting subparagraph (4) (b) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) (b) shall read:

- (4) (b) The second (2nd) failure of the ethics and jurisprudence exam after the issuance of the provisional license.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-208, 63-11-209, 63-11-210, and 63-11-211.

Rule 1180-2-.07, Repealed, 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 paragraphs (1), (2) and (3), so that as amended, the new catchline and the paragraphs (1), (2) and (3) shall read:

1180-2-.07 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any psychologist licensed to practice psychology in this state or any other state who has not been disciplined by any psychology 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 psychologist holds or ever held a license to practice psychology 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 psychologists who have not been licensed in Tennessee, comply with all provisions of paragraphs (4), (6), (7), and (8) of rule 1180-2-.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) A psychologist 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 psychologist holding a Special Volunteer License may not do any of the following:
 1. Practice psychology 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 psychological 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 1180-1-.05 and .07, except those requiring the payment of any fees; and
 - 2. The rules governing continuing education as provided by rule 1180-1-.08; 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 psychologist 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 psychology 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 psychology 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 psychology 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 psychologist 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 psychological 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 psychology 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 1180-1-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-201, 63-11-104, 63-11-201, 63-11-203, 63-11-208, 63-11-211, 63-6-701 through 707, and Public Chapter 579 of the Public Acts of 2004.

Rule 1180-3-.03, Procedures for Licensure, is amended by deleting subparagraph (1) (k) in its entirety, 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) Under no circumstances shall the ethics and jurisprudence examination be waived.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-207, 63-11-209, and 63-11-210.

Rule 1180-3-.04, Examinations, is amended by deleting paragraphs (2), (3) and (4) in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (5) (b), so that as amended, the new paragraphs (2), (3) and (4), and the new subparagraph (5) (b) shall read:

- (2) Ethics and jurisprudence examination. All applicants for licensure must successfully complete the Board's ethics and jurisprudence examination as a prerequisite to licensure.
 - (a) The Board shall mail an ethics and jurisprudence examination to all applicants for licensure who have paid the Ethics and Jurisprudence Examination Fee and who have passed the EPPP.
 - (b) The applicant shall complete the ethics and jurisprudence examination and return it to the Board's administrative office.
 - (c) The scope and content of the examination shall be determined by the Board but limited to
 1. Tennessee Code Annotated, Title 63, Chapter 11; and
 2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapters 1180-1, 1180-2, 1180-3, and 1180-4; and
 3. The version of the "Ethical Standards" which are part of the "Ethical Principles of Psychologists and Code of Conduct" published by the American Psychological Association (A.P.A.), and approved by the A.P.A.'s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.
 - (d) Copies of the applicable statutes, regulations, and information on how to acquire the "Ethical Standards" 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 ethics and jurisprudence exam.
- (3) The Board may delay a decision on eligibility to take the written examination(s) and/or the ethics and jurisprudence examination for any candidate for whom the Board has requested additional information.
- (4) The Board shall schedule a meeting within ninety (90) days following the completion of all examinations at which time the Board will consider completed applications and examination results for the purpose of licensure.
- (5) (b) If the Board determines that the applicant has failed to successfully complete the ethics and jurisprudence examination, the applicant will be mailed another examination and he/she 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, 63-11-104, 63-11-206, 63-11-207, 63-11-209, and 63-11-210.

Rule 1180-3-.05, Temporary License, is amended by deleting part (2) (b) 3. in its entirety and substituting instead the following language, so that as amended, the new part (2) (b) 3. shall read:

- (2) (b) 3. Failure of the second (2nd) ethics and jurisprudence examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, 63-11-206, 63-11-207, 63-11-209, 63-11-210, and 63-11-211.

Rule 1180-4-.03, Procedures for Certification, is amended by deleting paragraph (4) in its entirety.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-11-104, and 63-11-207.

The notice of rulemaking set out herein was properly filed in the Department of State on the 1st day of September, 2004. (09-04)

BOARD OF SOCIAL WORKER CERTIFICATION AND LICENSURE - 1365

There will be a hearing before the Tennessee Board of Social Worker Certification and Licensure to consider the promulgation of a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-23-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 3rd 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, 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 RULE

NEW RULE

TABLE OF CONTENTS

1365-1-.21 Free Health Clinic and Volunteer Practice Requirements

1365-1-.21 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any social worker licensed or certified to practice in this state or any other state who has not been disciplined by any licensure board may have his/her license or certificate converted to or receive a Tennessee “Special Volunteer License,” as defined in T.C.A. § 63-1-201, which will entitle the licensee or certificate holder to practice without remuneration and 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 social worker holds or ever held a license or certificate 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 or certificate has never been subjected to any disciplinary action and is free and clear of all encumbrances; and
 3. For social workers who have not been licensed or certified in Tennessee, comply with all provisions of subparagraphs (3) (e) and (3) (f) of rule 1365-1-.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 or certificate holder intends to practice along with proof of the clinic’s private, and not-for-profit status.
 - (b) A social worker 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 social worker 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 1365-1-.09 and .11, except those requiring the payment of any fees; and
 2. The rules governing continuing education as provided by rule 1365-1-.12; and

3. Disciplinary action for the same causes and pursuant to the same procedures as all other licenses and certificates issued by the Board.
- (2) Practice Pursuant to the “Volunteer Health Care Services Act” T.C.A. §§ 63-6-701, et seq.
 - (a) Any social worker licensed in this or any other state, territory, district or possession of the United States whose license or certificate 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 or certification 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 social worker 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 1365-1-3-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-201, 63-6-701 through 707, 63-23-102, 63-23-103, 63-23-108, 63-23-109, 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 8th day of September, 2004.
(09-09)

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WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 04-17 MIGRATORY BIRD HUNTING SEASONS AND REGULATIONS

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Section 70-4-107 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following migratory bird hunting regulations effective October 1, 2004. Season dates and limits pending final Federal Frameworks.

SECTION I. HUNTING SEASONS

Species	Season Opens	Season Closes
A. Ducks, Coots, and Mergansers		
Reelfoot Duck Zone	Nov. 13	Nov. 14
	Dec. 4	Jan. 30
Pintail & Canvasback	Jan. 1	Jan. 30
Reelfoot Duck Zone shall include the waters of Reelfoot Lake.		
Remainder of State	Nov. 27	Nov. 28
	Dec. 4	Jan. 30
Pintail & Canvasback	Jan. 1	Jan. 30
B. Youth Waterfowl Hunting Season		
Reelfoot Duck Zone	Feb. 5	Feb. 6
Remainder of State	Feb. 5	Feb. 6

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

C. Purple Gallinules and Common Moorhens

Reelfoot Duck Zone	Nov. 13	Nov. 14
	Dec. 2	Jan. 23

Hunting Seasons	Season Opens	Season Closes
Remainder of State	Nov. 27 Dec. 2	Nov. 28 Jan. 23
D. Virginia Rails and Sora Rails		
Reelfoot Duck Zone	Nov. 13 Dec. 2	Nov. 14 Jan. 20
Remainder of State	Nov. 27 Dec. 2	Nov. 28 Jan. 20
E. White-fronted Geese	Nov. 20	Feb. 13
F. Blue, Snow, and Ross' Geese	Nov. 13	Feb. 27
G. Brant	Nov. 27	Jan. 31
H. Canada Geese		
1. Northwest MVP Zone: Mississippi Valley Population Lake, Obion, and Weakley Counties, and Those Portions of Gibson and Dyer Counties Not Included in the Southwest MVP Zone.	Dec. 4	Feb. 13
2. Southwest MVP Zone: Mississippi Valley Population That portion of the state bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45.	Oct. 2 Dec. 12	Oct. 10 Jan. 30
3. Kentucky/Barkley Lake Zone: Southern James Bay Population That area west of Highway 13 not in the Northwest and Southwest MVP Zones.	Oct. 2 Dec. 12	Oct. 10 Jan. 30
4. Remainder of the State:	Oct. 2 Dec. 1	Oct. 10 Jan. 30

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

SECTION II. SHOOTING HOURS - From ½ hour before sunrise to sunset daily, for all species and seasons

SECTION III. BAG AND POSSESSION LIMITS**A. Ducks and Mergansers**

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

The daily bag limit of merganser is 5, only 1 of which may be a hooded merganser.

Possession Limit:

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

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

SECTION IV. REPEAL OF PRIOR PROCLAMATION

This proclamation repeals Proclamation No. 03-17, dated August 21, 2003.

Proclamation No. 04-17, received and recorded this 14th day of September, 2004. (09-14)

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660**PROCLAMATION 04-19****AMENDMENT TO PROCLAMATION 04-7****OPENING HATCHIE, LOWER HATCHIE, REELFOOT, LAKE ISOM, CROSS CREEKS, CHICKASAW,
AND TENNESSEE NATIONAL WILDLIFE REFUGES TO HUNTING**

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Sections 70-4-107 and 70-4-119, thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following amendments to Proclamation 04-7 opening Hatchie, Lower Hatchie, Reelfoot, Lake Isom, Cross Creeks, Chickasaw, and Tennessee National Wildlife Refuges to hunting.

Amend Section IV. Tennessee National Wildlife Refuge (Page 3) by deleting the following:

Canada Goose	Same as statewide until opening of wood duck/teal season	In accordance with statewide regulations
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Amend Section VI. Cross Creeks National Wildlife Refuge (Page 5) by deleting the following:

Canada Goose	Same as statewide until opening of wood duck/teal season	Same as statewide
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Proclamation 04-19 received and recorded this 14th day of September, 2004. (09-13)



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 September 1, 2004 and ending September 30, 2004.

A handwritten signature in black ink, reading 'Riley C. Darnell'. The signature is written in a cursive style with a large, prominent 'R' and 'D'.

RILEY C. DARNELL
Secretary of State