

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*.

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

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ANNOUNCEMENTS

ALARM SYSTEMS CONTRACTORS BOARD - 0090-1

NOTICE OF WITHDRAWAL OF RULES

The Tennessee Alarm Systems Contractors Board hereby gives notice of withdrawal of Rule 0090-1-.09 (2) (c) filed with the Department of State on the 6th day of October, 2004, to have become effective on the 20th day of December, 2004.

The notice of withdrawal of rules set out herein was properly filed with the Department of State on the 26th day of October, 2004. (10-45)

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 December 2004 is 8.69 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 4.69 percent.

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

Kevin P. Lavender

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

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

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-02	Oct 4, 2004	0870 Massage Licensure Board	Rulemaking Hearing Rules	<i>Chapter 0870-1 General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.02 Practice Standards and Inspection of Establishments 0870-1-.04 Licensure and Provisional Licensure Process 0870-1-.11 Retirement Inactivation and Reactivation of Licensure 0870-1-.19 Professional Ethical Standards	Richard F. Russell Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 18, 2004
10-03	Oct 5, 2004	0400 Environment and Conservation- Natural Heritage	Rulemaking Hearing Rules	<i>Chapter 0400-6-2 Rare Plant Protection and Conservation Regulations</i> 0400-6-2-.04 List of Endangered Species	Reginald Reeves 401 Church St 8th fl Nashville TN 37243 (615) 532-0431	Dec 19, 2004
10-04	Oct 6, 2004	0450 Professional Counselors, Marital and Family Therapists and Clinical Pastoral Therapists	Rulemaking Hearing Rules	<i>Chapter 0450-1 General Rules Governing Professional Counselors</i> 0450-1-.07 Application Review Approval Denial Interviews <i>Chapter 0450-2 General Rules Governing Marital and Family Therapists</i> 0450-2-.06 Fees 0450-2-.07 Application Review Approval Denial Interviews <i>Chapter 0450-3 General Rules Governing Clinical Pastoral Therapists</i> 0450-3-.07 Application Review Approval and Denial 0450-3-.08 Examinations	Richard F. Russell Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 20, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-05	Oct 6, 2004	0090 Alarm Systems Contractors Board	Rulemaking Hearing Rules	<i>Chapter 0090-1 General Provisions</i> 0090-1-.12 Fingerprinting 0090-1-.13 Adding Classifications	Alison G. Zane Commerce and Insurance 500 J Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	Dec 20, 2004
10-06	Oct 7, 2004	1200 Health Health Related Boards	Proposed Rules	<i>Chapter 1200-10-2 General Rules and Regulations Governing the Practice of Reflexology</i> 1200-10-2-.06 Fees	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Feb 28, 2005
10-08	Oct 11, 2004	1200 Health Tennessee Medical Laboratory Board Health Related Boards	Rulemaking Hearing Rules	<i>Chapter 1200-6-1 General Rules Governing Medical Laboratory Personnel</i> 1200-6-1-.14 Trainee Permits 1200-6-1-.20 Qualifications and Duties of the Medical Laboratory Director <i>Chapter 1200-6-3 General Rules Governing Medical Laboratories</i> 1200-6-3-.07 Participation in Proficiency Testing 1200-6-3-.08 Patient Test Management 1200-6-3-.09 Quality Control	Robert J. Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 25, 2005
10-11	Oct 12, 2004	1200/0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.08 Providers	George Woods Bureau of TennCare 729 Church Street Nashville, TN 37247-6501 (615) 741-0145	Dec 26, 2004
10-12	Oct 12, 2004	1200/0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.08 Providers	George Woods Bureau of TennCare 729 Church Street Nashville, TN 37247-6501 (615) 741-0145	Dec 26, 2004
10-13	Oct 12, 2004	1200/0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules	<i>Chapter 1200-13-12 Bureau of TennCare</i> 1200-13-12-.08 Providers	George Woods Bureau of TennCare 729 Church Street Nashville, TN 37247-6501 (615) 741-0145	Dec 26, 2004
10-14	Oct 12, 2004	1370 Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists	Rulemaking Hearing Rules	<i>Chapter 1370-2 General Rules Governing Hearing Instrument Specialists</i> 1370-2-.12 Continuing Education, Calibration Certificates, and Bills of Sale 1370-2-.15 Disciplinary Actions, Civil Penalties, Informal Settlements, Assessment of Costs, and Subpoenas	Ernest Sykes, Jr OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 26, 2004

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-15	Oct 12, 2004	1200 Health Health Related Brds	Proposed Rules	<i>Chapter 1200-10-1</i> <i>General Rules and Regulations</i> 1200-10-1-.12 Organization Registration Under the "Volunteer Health Care Services Act"	Robert Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Feb 28, 2005
10-16	Oct 12, 2004	0480 Dispensing Opticians	Rulemaking Hearing Rules	<i>Chapter 0480-1</i> <i>General Rules Governing Dispensing Opticians</i> 0480-1-.12 Continuing Education	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 26, 2004
10-17	Oct 12, 2004	0880 Medical Examiners	Rulemaking Hearing Rules	<i>Chapter 0880</i> <i>General Rules and Regulations Governing the Practice of Medicine</i> 0880-2-.15 Medical Records	Robert Kraemer OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Dec 26, 2004
10-18	Oct 13, 2004	0800 Labor Workers' Compensation	Emergency Rules	<i>Chapter 0800-2-13</i> <i>Penalty Program</i> 0800-2-13-.01 Definitions 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits 0800-2-13-.03 Departmental Actions 0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers' Compensation Benefits 0800-2-13-.05 Notice of Hearing 0800-2-13-.06 Discovery 0800-2-13-.07 Continuances 0800-2-13-.08 Effect of Employer's Failure to Appear at Hearing 0800-2-13-.09 Representation at the Hearing 0800-2-13-.10 Pre-Hearing Matters 0800-2-13-.11 Order of Proceedings at the Hearing 0800-2-13-.12 Scope of Examination and Rules of Evidence 0800-2-13-.13 Burden of Proof 0800-2-13-.14 Determinations Pursuant to the Hearing 0800-2-13-.15 Review of Initial Order 0800-2-13-.16 Judicial Review 0800-2-13-.17 Procedure in Other Divisional Penalty Assessments	Peter B. Halverstadt Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville, TN 37243-0661 (615) 532-2403	Oct 13, 2004 through Mar 27, 2005

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-19	Oct 13, 2004	0800 Labor Workers' Compensation	Proposed Rules	<p><i>Chapter 0800-2-13 Penalty Program</i></p> <p>0800-2-13-.01 Definitions</p> <p>0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits</p> <p>0800-2-13-.03 Departmental Actions</p> <p>0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers' Compensation Benefits</p> <p>0800-2-13-.05 Notice of Hearing</p> <p>0800-2-13-.06 Discovery</p> <p>0800-2-13-.07 Continuances</p> <p>0800-2-13-.08 Effect of Employer's Failure to Appear at Hearing</p> <p>0800-2-13-.09 Representation at the Hearing</p> <p>0800-2-13-.10 Pre-Hearing Matters</p> <p>0800-2-13-.11 Order of Proceedings at the Hearing</p> <p>0800-2-13-.12 Scope of Examination and Rules of Evidence</p> <p>0800-2-13-.13 Burden of Proof</p> <p>0800-2-13-.14 Determinations Pursuant to the Hearing</p> <p>0800-2-13-.15 Review of Initial Order</p> <p>0800-2-13-.16 Judicial Review</p> <p>0800-2-13-.17 Procedure in Other Divisional Penalty Assessments</p>	Peter B. Halverstadt Labor & Workforce Development A Johnson Twr 2nd Fl 710 J Robertson Pkwy Nashville, TN 37243-0661 (615) 532-2403	Feb 28, 2005.
10-22	Oct 15, 2004	0200 Barber Examiners	Rulemaking Hearing Rules	<p><i>Chapter 0200-1 Rules of Barber Board</i></p> <p>0200-1-.07 Equipment and Location Requirements for Barber Shops</p> <p>0200-1-.11 Fees</p> <p>0200-1-.14 Teacher Training Programs</p> <p><i>Chapter 0200-3 Sanitary Requirements</i></p> <p>0200-3-.05 Sanitation and Disinfection</p> <p>0200-3-.06 Prohibited Hazardous Substances/Use of Products</p> <p>0200-3-.16 Facial Treatments.</p>	Marilynn A. Tucker, Barber Examiners TN Twr 25th Fl 312 8th Ave N Nashville TN 37423-0569 (615) 741-3072	Dec 29, 2004
10-23	Oct 18, 2004	1045 Optometry	Rulemaking Hearing Rules	<p><i>Chapter 1045-2 General Rules Governing the Practice of Optometry</i></p> <p>1045-2-.01 Fees</p> <p>1045-2-.09 Ocular and Contact Lens Prescriptions and Office Equipment</p> <p>1045-2-.11 Scope of Practice</p> <p>1045-2-.14 Optometric Records</p>	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-24	Oct 18, 2004	1370 Communications Disorders and Sciences Council for Licensing Hearing Instrument Specialists	Rulemaking Hearing Rules	<i>Chapter 1370-2</i> <i>General Rules Governing Hearing Instrument Specialists</i> 1370-2-.15 Disciplinary Actions, Civil Penalties, Informal Settlements, Assessment of Costs, and Subpoenas	Ernest Sykes, Jr OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005
10-25	Oct 18, 2004	1050 Osteopathic Examination	Rulemaking Hearing Rules	<i>Chapter 1050-2</i> <i>General Rules and Regulations Governing the Practice of Osteopathy</i> 1050-2-.18 Medical Records	Robert Kraemer, Jr OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005
10-26	Oct 18, 2004	1200 Health Board of Alcohol and Drug Abuse Counselors Health Related Boards	Rulemaking Hearing Rules	<i>Chapter 1200-30-1</i> <i>Rules Governing Licensure of Alcohol and Drug Abuse Counselors</i> 1200-30-1-.09 Renewal of License 1200-30-1-.12 Continuing Education	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005
10-27	Oct 18, 2004	0870 Massage Licensure Board	Rulemaking Hearing Rules	<i>Chapter 0870-1</i> <i>General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.04 Licensure and Provisional Licensure Process	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005
10-28	Oct 18, 2004	0450 Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists	Rulemaking Hearing Rules	<i>Chapter 0450-1</i> <i>General Rules Governing Professional Counselors</i> 0450-1-.12 Continuing Education <i>Chapter 0450-2</i> <i>General Rules Governing Marital and Family Therapists</i> 0450-2-.12 Continuing Education <i>Chapter 0450-3</i> <i>General Rules Governing Clinical Pastoral Therapists</i> 0450-3-.12 Continuing Education	Richard F. Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005
10-29	Oct 18, 2004	1730 Veterinary Medical Examiners	Rulemaking Hearing Rules	<i>Chapter 1730-1</i> <i>General Rules Governing Veterinarians</i> 1730-1-.01 Definitions 1730-1-.13 Unprofessional Conduct <i>Chapter 1730-2</i> <i>General Rules Governing Veterinary Facilities</i> 1730-2-.01 Definitions 1730-2-.07 Mobile Facility / Satellite Veterinary Clinics / Emergency Hospitals / House Calls 1730-2-.13 Unprofessional Conduct of a Premises Owner and/or Veterinarian	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005

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SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-30	Oct 18, 2004	1000 Nursing	Rulemaking Hearing Rules	<p><i>Chapter 1000-1 Rules And Regulations Of Registered Nurses</i> 1000-1-.14 Standards of Nursing Competence 1000-1-.15 Scope of Practice</p> <p><i>Chapter 1000-2 Rules and Regulations of Licensed Practical Nurses</i> 1000-2-.14 Standards of Nursing Competence</p> <p><i>Chapter 1000-4 Advanced Practice Nurses & Certificates of Prescribe</i> 1000-4-.08 Treatment of Pain Fitness to Prescribe</p>	Richard Russell OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005
10-31	Oct 18, 2004	1180 Psychology	Rulemaking Hearing Rules	<p><i>Chapter 1180-1 General Rules Governing the Practice of Psychologists, Senior Psychological Examiners, Psychological Examiners, and Certified Psychological Assistants</i> 1180-1-.04 Application Review Approval Denial and Interviews</p> <p><i>Chapter 1180-2 Rules Governing Psychologists</i> 1180-2-.03 Procedures for Licensure</p> <p><i>Chapter 1180-3 Rules Governing Psychological Examiners and Senior Psychological Examiners</i> 1180-3-.03 Procedures for Licensure</p> <p><i>Chapter 1180-4 Rules Governing Certified Psychological Assistants</i> 1180-4-.03 Procedures for Certification</p>	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 1, 2005
10-32	Oct 21, 2004	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	<p><i>Chapter 1240-4-1 Standards for Group Child Care Homes</i> 1240-4-1-.07 Transportation</p>	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Jan 1, 2005
10-33	Oct 18, 2004	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	<p><i>Chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children</i> 1240-4-3-.10 Transportation</p>	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Jan 1, 2005
10-34	Oct 18, 2004	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	<p><i>Chapter 1240-4-4 Standards for Family Child Care Homes</i> 1240-4-4-.07 Transportation</p>	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Jan 1, 2005

SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-35	Oct 18, 2004	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	<i>Chapter 1240-4-6</i> <i>Adult and Family Services Division</i> 1240-4-4-.07 Transportation	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Jan 1, 2005
10-36	Oct 21, 2004	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	<i>Chapter 1240-2-6</i> <i>Review and Adjustment of Child Support Orders</i> 1240-2-6-.01 Purpose and Scope of Rules 1240-2-6-.02 Definitions 1240-2-6-.03 Review, Adjustment Cycles: Evidence Standards 1240-2-6-.04 Notices of Review, Review Alternatives and Appeals	William B. Russell Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Jan 4, 2005
10-37	Oct 21, 2004	1640 TN Student Assistance Corporation	Proposed Rules	<i>Chapter 1640-1-19</i> <i>TN Education Lottery Scholarship</i> 1640-1-19-.01 Definitions 1640-1-19-.02 Scholarship Award Amounts and Classification 1640-1-19-.05 Eligibility – TN Hope Scholarship 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship 1640-1-19-.08 Eligibility – TN Hope Access Grant 1640-1-19-.10 Retention of Awards – General Requirements 1640-1-19-.16 Converting from Full-Time Enrollment	Lonna Hildreth TSAC Suite 1959 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243 615-741-1346	Feb 28, 2005
10-38	Oct 21, 2004	1640 TN Student Assistance Corporation	Public Necessity Rule	<i>Chapter 1640-1-19</i> <i>TN Education Lottery Scholarship</i> 1640-1-19-.01 Definitions 1640-1-19-.02 Scholarship Award Amounts and Classification 1640-1-19-.05 Eligibility – TN Hope Scholarship 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship 1640-1-19-.08 Eligibility – TN Hope Access Grant 1640-1-19-.10 Retention of Awards – General Requirements 1640-1-19-.16 Converting from Full-Time Enrollment	Lonna Hildreth TSAC Suite 1959 Pkwy Twrs 404 J Robertson Pkwy Nashville TN 37243 615-741-1346	Oct 1, 2004 through April 4, 2005
10-39	Oct 22, 2004	1200 Health Community Services	Public Necessity Rule	<i>Chapter-20-11</i> 1200-20-11-.02 Definitions 1200-20-11-.04 Eligibility	Kassi Wiley OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Oct 22, 2004 through April 5, 2005

ANNOUNCEMENTS

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SEQ NO	FILE DATE	DEPARTMENT & DIVISION	TYPE OF FILING	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
10-41	Oct 22, 2004	1200 Health Bureau of Health Services Administration Division of General Environmental Health	Rulemaking Hearing Rules	<i>Chapter 1200-23-1</i> <i>Food Service Establishment</i> 1200-23-1-.01 Definitions 1200-23-1-.02 Food Sanitation 1200-23-1-.03 Establishment Permitting and Inspection 1200-23-1-.04 Fees	Kassi Wiley OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 5, 2005
10-42	Oct 22, 2004	1200 Health Bureau of Health Services Administration Division of General Environmental Health	Rulemaking Hearing Rules	<i>Chapter 1200-23-7</i> <i>Bedding Materials</i> 1200-23-7-.01 Purpose 1200-23-7-.02 Definitions 1200-23-7-.03 Adjunctive Terms 1200-23-7-.04 Restricted and Prohibited Terms 1200-23-7-.05 Various Fiber By-Products And Other Filling Materials	Kassi Wiley OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 (615) 741-1611	Jan 5, 2005
10-44	Oct 25, 2004	0780 Commerce and Insurance Regulatory Boards	Rulemaking Hearing Rules	0780-5-11-.01 Assessment of Investigatory and Hearing Cases	Christy Allen Office of Legal Counsel 500 J Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 741-3072	Jan 8, 2005
10-46	Oct 15, 2004	1200 Health	Rulemaking Hearing Rules	<i>Chapter 1200-3-36</i> <i>Motor Vehicle Tampering</i> 1200-3-36-.01 Purpose 1200-3-36-.02 Definitions 1200-3-36-.03 Motor Vehicle Tampering Prohibited 1200-3-36-.04 Record Keeping Requirements 1200-3-36-.05 Exemptions	Vicki Lowe Air Pollution 9th Fl L&C Annex 401 Church St Nashville TN 37243-1531 532-0554	Dec 29, 2004
10-47	Oct 15, 2004	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	<i>Chapter 1200-3-18</i> <i>Volatile Organic Compounds</i> 1200-3-18-.22 Bulk Gasoline Plants 1200-3-18-.24 Gasoline Dispensing Facilities-- Stage I and Stage II Vapor Recovery	Ms. Lacey Hardin Air Pollution Control 9th Floor L & C Annex 401 Church Street (615) 532-0554	Dec 29, 2004

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

Applications will be heard at the December 15, 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 October 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

Regional Hospital of Jackson
367 Hospital Boulevard
Jackson (Madison County), TN 38305
CN0407-065
Contact Person: Jeff Vosel, Vice President
Phone No. 615-321-5577

The conversion and redistribution of ten (10) acute care hospital beds to adult psychiatric hospital beds for the establishment of a ten (10) bed geropsychiatric unit at Regional Hospital of Jackson, 367 Hospital Boulevard, Jackson, Tennessee 38305. This geropsychiatric unit is anticipated to be managed by Senior Health Incorporated.

\$ 290,500.00

Chattanooga-Hamilton County Hospital Authority, d/b/a Erlanger East
1751 Gunbarrel Road
Chattanooga (Hamilton County), TN 37421
CN0407-067
Contact Person: Martin S. McKay, Planner
Phone No. 423-778-3286

The addition of six (6) beds to establish a level II A nursery. Six (6) acute hospital beds will be transferred from Erlanger Medical Center to Erlanger East. The location of the project will be 1751 Gunbarrel Road, Chattanooga, TN 37421. Upon completion of the project, the six (6) acute care hospital beds transferred from Erlanger Medical Center to Erlanger East will be delicensed from Erlanger Medical Center.
\$ 211,730.00

Galen Medical Group, PC
1651 Gunbarrel Road
Chattanooga (Hamilton County), TN 37421
CN0407-071
Contact Person: Kim Harvey Looney, Esq.
Phone No. 615-259-1450

The initiation of magnetic resonance imaging (MRI) services, and the acquisition of a MRI scanner. No inpatient beds are affected and no licensure is required as a result of this project. The imaging services will be located at one of the Galen practice sites at 1651 Gunbarrel Road, Chattanooga (Hamilton County), Tennessee 37421-3126. Galen also plans to provide certain other imaging modalities, including CT, bone densitometry, ultrasound, echo cardiography, mammography, X-ray and nuclear cardiography for its practice at this location.
\$ 8,373,957.11

Hospice of Cumberland County, Inc.
Kate's Korner
Crossville (Cumberland County), TN 38555
CN0409-085
Contact Person: Roland McPeters, Executive Director
Phone No. 931-484-4748

The construction of a six (6)-bed residential hospice on Kate's Korner near the intersection of Genesis Road and Wayne Avenue. No new health service initiatives or major medical equipment are involved. Hospice of Cumberland County currently provides hospice care to residents of Cumberland County in their homes and in county nursing homes.
\$ 558,000.00

Beverly Health Care Brandywood
555 East Bledsoe Street
Gallatin (Sumner County), TN 37066
CN0409-086
Contact Person: John Grobmyer, Vice President-Construction
Phone No. 479-201-4410

The construction of a twenty-four (24) bed Alzheimer's unit for a total of one hundred twenty-four (124) dually certified Medicare/Medicaid skilled nursing beds.
\$ 1,333,625.00

Baptist Memorial Hospital – Memphis Skilled Nursing Facility
6019 Walnut Grove Road
Memphis (Shelby County), TN 38120
CN0409-087
Contact Person: Arthur Maples, Director Strategic Analysis
Phone No. 901-227-4137

The addition of five (5) Medicare skilled nursing home beds to the current licensed thirty (30) beds for a total licensed bed complement of thirty-five (35) beds.
\$ 68,300.00

Specialty MRI Center
2018 Murphy Avenue
Nashville (Davidson County), TN 37203
CN0409-088
Contact Person: Willis S. Sanders, III, CEO
Phone No. 615-312-0123

The establishment of an outpatient diagnostic center (ODC), acquisition of magnetic resonance imaging (MRI) equipment and the initiation of MRI services specializing in breast MRI services.
\$ 2,791,870.50

United Regional Medical Center
1001 McArthur Drive
Manchester (Coffee County), TN 37355
CN0409-089
Contact Person: Robert George, CFO
Phone No.: 931-728-3586

A combination positron emission tomography (PET) and a computerized tomography (CT) to be installed at hospital. No inpatient beds are involved. * Simultaneous review application filed by Harton Regional Medical Center, CN0409-090.
\$ 3,108,982.00

Harton Regional Medical Center
 1801 North Jackson Street
 Tullahoma (Coffee County), TN 37388
 CN0409-090
 Contact Person: William H. West, Attorney
 Phone No. 615-726-5600

The acquisition, via lease, of a mobile positron emission tomography (PET) and computerized tomography (CT) scanner and the initiation of mobile PET scanning services on a one (1) day per week basis. The project location is at Harton Regional Medical Center, 1801 North Jackson Street, Tullahoma, Tennessee 37388. No inpatient beds are affected.* Filed as a simultaneous review with United Regional Medical Center, CN0409-089.
 \$ 702,480.00

DEPARTMENT OF TRANSPORTATION - 1680

PETITION FOR DECLARATORY ORDER NOTICE OF HEARING

Pursuant to Tennessee Code Annotated § 4-5-224, the Tennessee Department of Transportation gives the following notice of hearing on a petition for declaratory order:

1. Petitioner: City of Savannah, Tennessee
2. Petitioners' Attorney: James A. Hopper, Esq.
 Hopper & Plunk, PLLC
 40 West Main Street
 P.O. Box 220
 Savannah, Tennessee 38372

3. Summary of the relief requested:

The Petitioner requests a declaratory order from the Tennessee Department of Transportation declaring that under the facts alleged in the petition the City of Savannah is eligible for reimbursement of its utility relocation costs under Tenn. Code Ann. § 54-5-804 and that the Department will reimburse the City for the cost of utility relocations from public highway right-of-way necessitated by the Department's proposed construction of improvements to U.S. Highway 64 (State Route 15).

4. Statutes that the Tennessee Department of Transportation is called upon to interpret or upon which it is to rule:

- Tenn. Code Ann. § 54-5-804, which provides in pertinent part as follows:

- (a) The commissioner is authorized to reimburse a utility for the cost of relocation, and to include such cost as a highway construction project cost, where the cost of relocation arises from the relocation of a utility facility located on a public highway right-of-way and the highway construction project is undertaken by the department, subject to the following conditions:
 - (1) The utility shall fully comply with all provisions of § 54-5-854(b), including the preparation and submission to the department of the utility's relocation plan, cost estimate and schedule of calendar days for completing the relocation, within the time period specified or within such additional time as may be allowed under § 54-5-854(b); . . .
 - Tenn. Code Ann. § 54-5-854, which provides in pertinent part as follows:
 - (a) When the department is informed of the existence of utility facilities pursuant to § 54-5-853, it shall provide each such owner with at least two (2) sets of complete project plans by certified mail or hand delivery.
 - (b) Within one hundred twenty (120) calendar days following the receipt of such plans, the owner shall mark thereon, or on a copy thereof, the approximate vertical and horizontal locations of underground utility facilities, approximate horizontal location of above-ground utility facilities, a description of each of its existing utility facilities and any proposed new location of such facilities and additional facilities within all rights-of-way shown on the project plans, and prepare a plan and a schedule of calendar days to accomplish the same. The project plans, or a copy thereof, and the plan and schedule of calendar days, shall be returned to the department in care of the person whose name and address are listed on the project plans. Should coordination with other owners be required in order for an owner to prepare a plan and schedule, of calendar days, or should changes to the project plans cause the utility to alter its relocation plan or schedule, then additional time shall be allowed, but in no case shall such additional time exceed the original one hundred twenty (120) calendar days by more than an additional forty-five (45) calendar days.
5. Date, Time and Place of Hearing:

A contested case hearing for this matter is scheduled for Wednesday, January 19, 2005, at 9:00 a.m., in the Commissioner's conference room, 18th Floor, James K. Polk Building, 505 Deaderick Street in Nashville, Tennessee.

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the Office of the Secretary of State, Publications Division, on this the 4th day of October, (10-01)

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 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)

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-13 PENALTY PROGRAM

Statement of Necessity Requiring Emergency Rules

Pursuant to T.C.A. §4-5-208, I am promulgating emergency rules covering the procedures of assessment and appeal rights of penalties issued by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development. The emergency rules are necessary because Public Chapter 962 requires the assessment of penalties for injuries arising on or after July 1, 2004.

The Agency finds that employers or insurers who fail to pay or timely pay all workers' compensation benefits due an injured employee jeopardize the injured employee's ability to timely pay their mortgage or rent, car notes, utility bills, food costs, etc. at a time when the injured employee is in dire need of assistance, and thus constitutes an immediate danger to the public health, safety, and welfare. These emergency rules provide standards by which the new penalties and procedures enacted by the General Assembly in Public Chapter 962 can be immediately implemented by the Tennessee Department of Labor and Workforce Development to encourage compliance by employers and insurers to timely pay all workers' compensation benefits.

Peter B. Halverstadt
Director, Penalty Program

For copies of this emergency rule, contact: Shara Hamlett, Legal Assistant, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 253-6261.

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0800-2-13-.01 DEFINITIONS. The following definitions are for the purposes of this chapter only.

- (1) "Administrative Appeal" means after notice and an opportunity for a hearing, a contested hearing to review an Agency Decision wherein the Division has assessed a civil penalty.
- (2) "Administrator" means the Administrator of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (3) "Agency Decision" means a ruling which disposes of a petition, contested case hearing, appeal, or other request for the Division to review the legitimacy of issuing a penalty.
- (4) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development, the Commissioner's Designee, or any other agency member appointed by the Commissioner to hear a contested case under the Tennessee Uniform Administrative Procedures Act.
- (5) "Commissioner's Designee" or "Designee" means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.
- (6) "Department" means the Tennessee Department of Labor and Workforce Development.
- (7) "Division" means the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (8) "Employee" shall have the same meaning as set forth in T.C.A. Section 50-6-102.
- (9) "Employer" shall have the same meaning as set forth in T.C.A. Section 50-6-102.
- (10) "Insurer" means an employer's workers' compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of T.C.A. Section 50-6-405 of Chapter 0780-1-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.

- (11) “Judicial Review” means a petition to Davidson County Chancery Court to review a Final Order issued by the Commissioner.
- (12) “Records of the Department” or “Department Records” means any data, including electronic, computer-generated, telephonic, or on paper, used in the business of the Department and obtained by any employee of the Department:
 - (a) from within the Department
 - (b) through an investigation; or
 - (c) from any other lawful source.
- (13) “Worker” means an employee or injured worker.
- (14) “Workers’ Compensation Law” means the Workers’ Compensation Act as currently enacted by the Tennessee General Assembly, specifically including any future enactments by the Tennessee General Assembly involving amendments, deletions, additions, repeals, or any other modification, in any form of the Workers’ Compensation Act.
- (15) “Workers’ Compensation Specialist” or “Specialist” shall mean a departmental employee who provides information and communication services regarding workers’ compensation for employees and employers and who may assess penalties for failure to timely pay workers’ compensation benefits or other violations of the Workers’ Compensation Law or the General Rules of the Workers’ Compensation Division of Tennessee.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.02 INVESTIGATION OF UNPAID OR UNTIMELY PAID WORKERS’ COMPENSATION BENEFITS

- (1) When investigating whether to assess a civil penalty for unpaid or untimely paid benefits, a Specialist may inquire into instances where an Employer or Insurer:
 - (a) reasonably appears to be subject to the Workers’ Compensation Law; and
 - (b) has or may have failed to pay, or has or may have failed to timely pay, workers’ compensation benefits to an employee as required by the Workers’ Compensation Law.
- (2) When an investigation reasonably indicates that an employer is subject to the Workers’ Compensation Law and that the employer or insurer has failed to pay or timely pay all workers’ compensation benefits due to an employee as required by the Workers’ Compensation Law, the Department shall so notify the employer or the insurer.
- (3) The notice shall advise the employer or insurer of the potential civil penalty which may be assessed against the employer or insurer if it is determined that the employer or insurer has failed to pay or timely pay all workers’ compensation benefits due to an employee as required by the Workers’ Compensation Law.
- (4) The employer or insurer shall have seven (7) days, excluding Saturdays, Sundays and holidays, from the date of the notice to respond and provide to the Department:

- (a) documented proof that the employer or insurer timely paid all workers' compensation benefits to which an employee is or was entitled under the Workers' Compensation Law; or
 - (b) a verified sworn affidavit, with supporting documentation, that either:
 - 1. no workers' compensation benefits are or were owed to an employee under the Workers' Compensation Law; or
 - 2. all workers' compensation benefits owed to an employee under the Workers' Compensation Law have been and continue to be timely paid to the employee.
- (5) In deciding whether a benefit is unpaid or untimely paid, compensation shall be deemed promptly paid if the first payment is made within fifteen (15) calendar days after the employer has knowledge of the injury and every subsequent payment is made within consecutive fifteen (15) calendar day increments, until all temporary benefits have been paid. After twenty (20) calendar days from the date of the employer's knowledge of any disability that would qualify for benefits, the twenty-five percent (25%) penalty will attach to all payments unpaid or untimely paid.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.03 DEPARTMENTAL ACTIONS

- (1) The Division shall:
 - (a) not issue a civil penalty if either:
 - 1. the employer or insurer had at all relevant times timely paid to the employee all workers' compensation benefits required by the Workers' Compensation Law; or
 - 2. the employer or insurer does not owe any workers' compensation benefits under the Workers' Compensation Law;
 - (b) issue an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law if:
 - 1. the employer is subject to the Workers' Compensation Law; and
 - 2. the employer or insurer is liable to pay workers' compensation benefits to an employee for a compensable work-related injury under the Workers' Compensation Law; and
 - 3. the employer or insurer has failed for any relevant period of time to timely pay all workers' compensation benefits as required by the Workers' Compensation Law.
- (2) If the Division issues an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law, the Agency Decision shall require that the civil penalty be made payable by the employer or insurer directly to the employee to whom the workers' compensation benefits are owed.

- (3) The Commissioner shall have the sole discretion not to issue a civil penalty even if the technical requirements of subparagraph (1)(b) are satisfied.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.04 ADMINISTRATIVE APPEAL OF AN AGENCY DECISION ASSESSING A CIVIL PENALTY FOR UNPAID OR UNTIMELY PAID WORKERS' COMPENSATION BENEFITS

- (1) An employer or insurer assessed a civil penalty for unpaid or untimely paid workers' compensation benefits has the right to request a contested case hearing to determine if the civil penalty should have been assessed.
- (2) The request for a hearing shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid worker' compensation benefits.
- (3) Any request for a hearing shall be filed with the Designee who issued the Agency Decision assessing the civil penalty within fifteen (15) calendar days of the date upon which the Agency Decision was issued. Failure to file a request for a hearing within fifteen (15) calendar days of the date of entry of the Agency Decision shall result in the Agency Decision becoming a Final Order not subject to further review.
- (4) The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have the authority to hear the matter as a contested case and determine if the civil penalty assessed for unpaid or untimely paid workers' compensation benefits should have been assessed.
- (5) Upon receipt of a timely filed request for a hearing, the Commissioner shall issue a Notice of Hearing to the employer or insurer.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.05 NOTICE OF HEARING

- (1) The Notice of Hearing shall specify:
 - (a) the time, place, and nature of the hearing;
 - (b) the right of the parties to be represented by counsel;
 - (c) the legal authority and jurisdiction under which the hearing is to be held;
 - (d) civil penalties subject to the requested hearing; and
 - (e) a short and plain statement of the matters asserted.
- (2) The Notice of Hearing shall be sent to the employer's and/or insurer's last known address, according to department records.
- (3) The Division shall schedule the hearing in a timely manner, not to exceed thirty (30) business days from the date on which the employer or insurer filed the request for a hearing.

Authority: T.C.A. §§4-5-307, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.06 DISCOVERY

- (1) Any party to a contested case shall have the right to reasonable discovery pursuant to T.C.A. §4-5-311.

Authority: T.C.A. §§4-5-311, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.07 CONTINUANCES

- (1) The Commissioner shall strongly discourage the continuance of a hearing.
- (2) All requests for continuances shall be made in writing as soon as reasonably and practicably possible prior to the scheduled date of the hearing. Such requests may only be granted at the discretion of the Commissioner and only for good cause shown. In addition, the Commissioner may grant a continuance during the course of a hearing in order to secure all of the evidence which the Commissioner deems necessary for a fair hearing to all parties of interest or at any time for other good cause shown.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.08 EFFECT OF EMPLOYER'S FAILURE TO APPEAR AT HEARING

- (1) Failure of an employer or insurer to appear at a scheduled hearing before the Commissioner after due notice thereof may result in a Default Judgment being entered against such employer or insurer.
- (2) In such cases as described in paragraph (1), the Commissioner shall render a decision on the basis of whatever evidence is submitted by the Division.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.09 REPRESENTATION AT THE HEARING

- (1) Each individual or entity may be represented at the hearing as follows:
 - (a) Any individual receiving due notice to appear at a hearing may appear at the hearing in his or her own behalf or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.
 - (b) Any general partnership receiving due notice to appear at a hearing may appear at the hearing by any of its partners with written authority from all other partners or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.

- (c) Any corporation, limited partnership, limited liability company, state-certified business entity, or any other entity not specifically referenced in this rule 0800-2-13-.09 which received due notice to appear at a hearing shall appear at the hearing only by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.
- (2) The Commissioner, in his or her discretion, may refuse to allow any person to continue representation or participation in any proceeding before the Commissioner if the Commissioner finds said person guilty of disorderly, disruptive, or unethical conduct during the course of the hearing.
 - (a) Any attorney seeking to appear for or to represent a party to any proceeding before the Commissioner or any other person seeking to assist in the appearance of a party to such proceeding shall cause to be filed, not later than the date of the hearing, a written notice of appearance. Such written notice of appearance shall specify sufficient information necessary to identify the particular proceeding involved and which must include, at least:
 - 1. the name and address of the employer or insurer; and
 - 2. the name, address, telephone and facsimile numbers, and BPR number of the attorney or other person filing the notice of appearance.
- (3) All notices of appearance shall be delivered to the Commissioner or mailed to:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Penalty Program
Andrew Johnson Tower, Second Floor
710 James Robertson Parkway
Nashville, TN 37243-0661
- (4) Any notice of appearance received by the Commissioner shall be deemed as having been filed for the purpose of any further proceeding in the same matter before the Commissioner.
 - (a) After the expiration of three (3) days from the date of receipt of a notice of appearance, any notice of hearing, decision, or other hearing-related documentation subsequently mailed by the Commissioner shall be mailed to the attorney or other person who has on file a properly executed notice of appearance.
- (5) Any requests for copies of other documents in any pending matter before the Commissioner shall be subject to a reasonable copy fee.

Authority: *T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).*

0800-2-13-.10 PRE-HEARING MATTERS

- (1) The names and addresses of all witnesses who may be called at a hearing and a list of all proposed exhibits shall be both filed with the Commissioner and served on opposing counsel at least seven (7) calendar days prior to the date of the hearing.
- (2) Copies of affidavits which may be used at a hearing shall be furnished to opposing counsel at least ten (10) calendar days prior to the date of the hearing.

- (3) Copies of all exhibits which are proposed to be offered shall be made available for viewing by opposing counsel upon request made no less than five (5) calendar days prior to the date of the hearing.
- (4) Either the employer/employer's attorney, insurer/insurer's attorney, or a staff attorney from the Department may request a pre-hearing conference by telephone or in person with the Commissioner. A request for a pre-hearing conference shall be made at least seven (7) calendar days prior to the date of hearing. The Commissioner may, in his or her discretion, grant or decline to grant a request for a pre-hearing conference, limit or expand the matters to be discussed at a pre-hearing conference, or otherwise discuss how to facilitate the orderly process of the hearing. The party requesting the conference shall be responsible for arranging the conference and coordinating the conference with opposing counsel. All discussions with the Commissioner at the pre-hearing conference shall include both the employer/employer's attorney, or the insurer/insurer's attorney and a staff attorney from the Department. The Commissioner may, on his or her own initiative, schedule a pre-hearing conference by telephone or in person with the employer/employer's attorney, or the insurer/insurer's attorney, and the staff attorney from the Department.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-208, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.11 ORDER OF PROCEEDINGS AT THE HEARING

- (1) The agency shall admit and give probative effect to evidence admissible in a Court and may also admit evidence which preserves probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and shall exclude evidence which in its judgment is irrelevant, immaterial, or unduly repetitious.
- (2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency.
- (3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.
- (4) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.12 SCOPE OF EXAMINATION AND RULES OF EVIDENCE

- (1) In any hearing before the Commissioner, witnesses may be examined regarding any matter, not privileged, which is relevant and material to the issues to be determined at such hearing. The rules of evidence applicable at such hearing shall be as provided for in T.C.A. Section 4-5-313.
- (2) The Commissioner may rule on and decide any question concerning the admissibility of evidence or procedural questions of law.
 - (a) It shall not be grounds for objection that testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence;

- (b) It shall not be grounds for objection that hearsay testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.
- (3) If an objection to proffered evidence is sustained by the Commissioner, the examining party or attorney may make a specific offer of what the examining party or attorney expects to prove by that evidence.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.13 BURDEN OF PROOF

- (1) The burden of proof at the hearing shall be on the employer or insurer, to prove, by a preponderance of the evidence, that the employer and/or insurer is either not subject to the Workers' Compensation laws or has timely paid all workers' compensation benefits due to an employee.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.14 DETERMINATIONS PURSUANT TO THE HEARING

- (1) If the Commissioner determines that the employer is not subject to the Workers' Compensation Law and has not been subject to the Workers' Compensation Law at any relevant times, then the Commissioner shall issue an Initial Order that all civil penalties assessed against the employer or insurer are void.
- (2) If the Commissioner determines that the employer or insurer either does not owe to an employee any workers' compensation benefits or has timely paid all workers' compensation benefits owed to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an Initial Order that all civil penalties assessed against the employer or insurer are void.
- (3) If the Commissioner determines that the employer or insurer has either not paid or not timely paid all workers' compensation benefits due to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an Initial Order that a civil penalty equal to twenty-five percent (25%) of the unpaid or untimely paid benefits due to the employee under the Workers' Compensation Law be paid by the employer or insurer directly to the employee to whom the unpaid or untimely paid benefits are/were owed.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.15 REVIEW OF INITIAL ORDER

- (1) The employer or insurer shall have the right to file a petition for the Commissioner to review the Initial Order, pursuant to the Tennessee Uniform Administrative Procedures Act.
- (2) Any petition to review the Initial Order must be filed in writing within fifteen (15) calendar days of the date of entry of the Initial Order. Failure to file a petition to review the Initial Order within fifteen (15) calendar days of the date of entry of the Initial Order shall result in the Initial Order becoming a Final Order not subject to further review.

- (3) Any petition to review the Initial Order must state its basis and clearly identify the issue(s) to be reviewed.
- (4) The Commissioner shall conduct said review by considering the parties' review briefs, the contested hearing transcript, and the record as a whole. The Commissioner will not hear oral argument unless specifically requested by the Commissioner. A party may submit new evidence only if such new evidence did not exist or was not available at the time of the contested hearing.
- (5) The Commissioner shall enter a Final Order that decides the petition for review of the Initial Order or remands the matter for further proceedings at the contested hearing level with instruction.

Authority: T.C.A. §§4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.16 JUDICIAL REVIEW

- (1) The employer or insurer has sixty (60) calendar days to file notice of appeal in the Davidson County Chancery Court for judicial review of a Final Order issued by the Commissioner.

Authority: T.C.A. §§4-5-322, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.17 PROCEDURE IN OTHER DIVISIONAL PENALTY ASSESSMENTS

- (1) The procedures contained in these Rules are applicable to other civil penalty assessments provided for in Title 50, Chapter 6 and the General Rules of the Workers' Compensation Division of Tennessee. These procedures include, but are not limited to, notice to the alleged violator of the alleged violation and the potential civil penalty(s), right to a contested case hearing, right to petition to review an Initial Order, and the appeal of a Final Order to Davidson County Chancery Court.
- (2) Whenever the Division is assessing a civil penalty, the Division has the authority to hear any dispute as to the assessment of the civil penalty as a contested case and the authority to issue Agency Decisions, Initial Orders, and Final Orders assessing civil penalties and/or deciding reviews or appeals of the assessment of civil penalties.
- (3) Whenever the Division is assessing a civil penalty pursuant to the Workers' Compensation statutes or General Rules of the Workers' Compensation Division of Tennessee, the potential violator shall have the burden of proving by a preponderance of the evidence that the civil penalty should not have been assessed.
- (4) When assessing civil penalties pursuant to, but not limited to, T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, and 50-6-244 and any penalties provided for in the General Rules of the Workers' Compensation Division of Tennessee, the Division may follow the procedures outlined in paragraph (1), has the authority outlined in paragraph (2), and the violator has the burden of proof outlined in paragraph (3).

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

The emergency rules set out herein were properly filed in the Department of State on the 13th day of October, 2004, and will be effective from the day of filing for a period of 165 days. These emergency rules will remain in effect through the 27th day of March, 2005. (10-18)

(blank)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF HEALTH – 1200 HEALTHRELATEDBOARDS

CHAPTER 1200-10-1 GENERALRULESANDREGULATIONS

Presented herein are proposed rules of the Tennessee Department of Health, Division of Health Related Boards submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Division of Health Related Boards to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Division of Health Related Boards on the First Floor of the Cordell Hull Building located at 425 5th Ave North, Nashville Tennessee 37247-1010 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of this emergency rule, contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville TN 37247-1010, 615-532-4397.

The text of the proposed amendment is as follows:

NEW RULE

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1200-10-1-.12 Organization Registration Under the “Volunteer Health Care Services Act”.

1200-10-1-.12 ORGANIZATION REGISTRATION UNDER THE “VOLUNTEER HEALTH CARE SERVICES ACT”.

- (1) Any sponsoring organization , as defined in T.C.A. §63-6-703 (4), that arranges for the volunteer provision of health care services which includes the provosion of health care services by any profession regulated pursuant to Tennessee Code Annotated, Title 63 shall register as require by T.C.A.§63-6-706 with the Division of Health Related Boards by doing the following:
 - (a) Obtain from the Division of Health Related Boareds a “Volunteer Services Organization” registration form which shall contain the information required by T.C.A. §63-6-706(a). commpleting it and submitting it along with any required documentation to the Division; and
 - (b) Submitting along with the regiastration form the non-refundable fifty dollar(\$50.00) registration fee. If the provision of health care services is in response to a natural or manmade disaster no registration fee need be submitted.

- (2) The registration form, fee, and the notifications regarding change in registration information, as well as the fifteen (15) day notifications required pursuant to T.C.A. §63-6-706(b) shall be sent to the following address:

Volunteer Health Care Services Administrator
 Division of Health Related Boards
 Department of Health
 First Floor Cordell Hull Building
 425 5th Avenue North
 Nashville TN 37247-1010

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-132, and 63-6-701 through 707.

The proposed rules set out herein were properly filed in the Department of State on the 12th day of October, 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 February, 2005. (10-15)

**THE TENNESSEE DEPARTMENT OF HEALTH – 1200
 HEALTH RELATED BOARDS**

CHAPTER 1200-10-2

GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF REFLEXOLOGY

Presented herein are proposed rules of the Tennessee Department of Health, Division of Health Related Boards submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Division of Health Related Boards to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Division of Health Related Boards on the First Floor of the Cordell Hull Building located at 425 5th Ave North, Nashville Tennessee 37247-1010 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of this emergency rule, contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville TN 37247-1010, 615-532-4397..

The text of the proposed amendment is as follows:

AMENDMENT

Rule 1200-10-2-.06 Fees is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) Biennial renewal fee \$225.00

Authority: T.C.A. §§4-5-202, 4-5-204, 63-30-110, and 63-30-112.

The proposed rules set out herein were properly filed in the Department of State on the 7th day of October, 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 February, 2005. (10-06)

**THE TENNESSEE DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT - 0800
DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 0800-2-13
PENALTY PROGRAM**

Presented herein are proposed rules of the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee 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 are published. Such petition to be effective must be filed with the Penalty Program, Second Floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN 37243-0661 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of this emergency rule, contact: Shara Hamlett, Legal Assistant, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 253-6261.

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0800-2-13-.01 DEFINITIONS. The following definitions are for the purposes of this chapter only.

- (1) “Administrative Appeal” means after notice and an opportunity for a hearing, a contested hearing to review an Agency Decision wherein the Division has assessed a civil penalty.
- (2) “Administrator” means the Administrator of the Workers’ Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (3) “Agency Decision” means a ruling which disposes of a petition, contested case hearing, appeal, or other request for the Division to review the legitimacy of issuing a penalty.
- (4) “Commissioner” means the Commissioner of the Tennessee Department of Labor and Workforce Development, the Commissioner’s Designee, or any other agency member appointed by the Commissioner to hear a contested case under the Tennessee Uniform Administrative Procedures Act.
- (5) “Commissioner’s Designee” or “Designee” means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.
- (6) “Department” means the Tennessee Department of Labor and Workforce Development.
- (7) “Division” means the Workers’ Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (8) “Employee” shall have the same meaning as set forth in T.C.A. Section 50-6-102.
- (9) “Employer” shall have the same meaning as set forth in T.C.A. Section 50-6-102.
- (10) “Insurer” means an employer’s workers’ compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of T.C.A. Section 50-6-405 of Chapter 0780-1-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.
- (11) “Judicial Review” means a petition to Davidson County Chancery Court to review a Final Order issued by the Commissioner.
- (12) “Records of the Department” or “Department Records” means any data, including electronic, computer-generated, telephonic, or on paper, used in the business of the Department and obtained by any employee of the Department:
 - (a) from within the Department
 - (b) through an investigation; or
 - (c) from any other lawful source.
- (13) “Worker” means an employee or injured worker.
- (14) “Workers’ Compensation Law” means the Workers’ Compensation Act as currently enacted by the Tennessee General Assembly, specifically including any future enactments by the Tennessee General Assembly involving amendments, deletions, additions, repeals, or any other modification, in any form of the Workers’ Compensation Act.

- (15) “Workers’ Compensation Specialist” or “Specialist” shall mean a departmental employee who provides information and communication services regarding workers’ compensation for employees and employers and who may assess penalties for failure to timely pay workers’ compensation benefits or other violations of the Workers’ Compensation Law or the General Rules of the Workers’ Compensation Division of Tennessee.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.02 INVESTIGATION OF UNPAID OR UNTIMELY PAID WORKERS’ COMPENSATION BENEFITS

- (1) When investigating whether to assess a civil penalty for unpaid or untimely paid benefits, a Specialist may inquire into instances where an Employer or Insurer:
- (a) reasonably appears to be subject to the Workers’ Compensation Law; and
 - (b) has or may have failed to pay, or has or may have failed to timely pay, workers’ compensation benefits to an employee as required by the Workers’ Compensation Law.
- (2) When an investigation reasonably indicates that an employer is subject to the Workers’ Compensation Law and that the employer or insurer has failed to pay or timely pay all workers’ compensation benefits due to an employee as required by the Workers’ Compensation Law, the Department shall so notify the employer or the insurer.
- (3) The notice shall advise the employer or insurer of the potential civil penalty which may be assessed against the employer or insurer if it is determined that the employer or insurer has failed to pay or timely pay all workers’ compensation benefits due to an employee as required by the Workers’ Compensation Law.
- (4) The employer or insurer shall have seven (7) days, excluding Saturdays, Sundays and holidays, from the date of the notice to respond and provide to the Department:
- (a) documented proof that the employer or insurer timely paid all workers’ compensation benefits to which an employee is or was entitled under the Workers’ Compensation Law; or
 - (b) a verified sworn affidavit, with supporting documentation, that either:
 - 1. no workers’ compensation benefits are or were owed to an employee under the Workers’ Compensation Law; or
 - 2. all workers’ compensation benefits owed to an employee under the Workers’ Compensation Law have been and continue to be timely paid to the employee.
- (5) In deciding whether a benefit is unpaid or untimely paid, compensation shall be deemed promptly paid if the first payment is made within fifteen (15) calendar days after the employer has knowledge of the injury and every subsequent payment is made within consecutive fifteen (15) calendar day increments, until all temporary benefits have been paid. After twenty (20) calendar days from the date of the employer’s knowledge of any disability that would qualify for benefits, the twenty-five percent (25%) penalty will attach to all payments unpaid or untimely paid.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.03 DEPARTMENTAL ACTIONS

- (1) The Division shall:
 - (a) not issue a civil penalty if either:
 1. the employer or insurer had at all relevant times timely paid to the employee all workers' compensation benefits required by the Workers' Compensation Law; or
 2. the employer or insurer does not owe any workers' compensation benefits under the Workers' Compensation Law;
 - (b) issue an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law if:
 1. the employer is subject to the Workers' Compensation Law; and
 2. the employer or insurer is liable to pay workers' compensation benefits to an employee for a compensable work-related injury under the Workers' Compensation Law; and
 3. the employer or insurer has failed for any relevant period of time to timely pay all workers' compensation benefits as required by the Workers' Compensation Law.
- (2) If the Division issues an Agency Decision assessing a civil penalty to be paid by the employer or insurer equal to twenty-five percent (25%) of the unpaid or untimely paid benefits owed to the employee under the Workers' Compensation Law, the Agency Decision shall require that the civil penalty be made payable by the employer or insurer directly to the employee to whom the workers' compensation benefits are owed.
- (3) The Commissioner shall have the sole discretion not to issue a civil penalty even if the technical requirements of subparagraph (1)(b) are satisfied.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.04 ADMINISTRATIVE APPEAL OF AN AGENCY DECISION ASSESSING A CIVIL PENALTY FOR UNPAID OR UNTIMELY PAID WORKERS' COMPENSATION BENEFITS

- (1) An employer or insurer assessed a civil penalty for unpaid or untimely paid workers' compensation benefits has the right to request a contested case hearing to determine if the civil penalty should have been assessed.
- (2) The request for a hearing shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid worker' compensation benefits.
- (3) Any request for a hearing shall be filed with the Designee who issued the Agency Decision assessing the civil penalty within fifteen (15) calendar days of the date upon which the Agency Decision was issued. Failure to file a request for a hearing within fifteen (15) calendar days of the date of entry of the Agency Decision shall result in the Agency Decision becoming a Final Order not subject to further review.

- (4) The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have the authority to hear the matter as a contested case and determine if the civil penalty assessed for unpaid or untimely paid workers' compensation benefits should have been assessed.
- (5) Upon receipt of a timely filed request for a hearing, the Commissioner shall issue a Notice of Hearing to the employer or insurer.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.05 NOTICE OF HEARING

- (1) The Notice of Hearing shall specify:
 - (a) the time, place, and nature of the hearing;
 - (b) the right of the parties to be represented by counsel;
 - (c) the legal authority and jurisdiction under which the hearing is to be held;
 - (d) civil penalties subject to the requested hearing; and
 - (e) a short and plain statement of the matters asserted.
- (2) The Notice of Hearing shall be sent to the employer's and/or insurer's last known address, according to department records.
- (3) The Division shall schedule the hearing in a timely manner, not to exceed thirty (30) business days from the date on which the employer or insurer filed the request for a hearing.

Authority: T.C.A. §§4-5-307, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.06 DISCOVERY

- (1) Any party to a contested case shall have the right to reasonable discovery pursuant to T.C.A. §4-5-311.

Authority: T.C.A. §§4-5-311, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.07 CONTINUANCES

- (1) The Commissioner shall strongly discourage the continuance of a hearing.
- (2) All requests for continuances shall be made in writing as soon as reasonably and practicably possible prior to the scheduled date of the hearing. Such requests may only be granted at the discretion of the Commissioner and only for good cause shown. In addition, the Commissioner may grant a continuance during the course of a hearing in order to secure all of the evidence which the Commissioner deems necessary for a fair hearing to all parties of interest or at any time for other good cause shown.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.08 EFFECT OF EMPLOYER'S FAILURE TO APPEAR AT HEARING

- (1) Failure of an employer or insurer to appear at a scheduled hearing before the Commissioner after due notice thereof may result in a Default Judgment being entered against such employer or insurer.
- (2) In such cases as described in paragraph (1), the Commissioner shall render a decision on the basis of whatever evidence is submitted by the Division.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.09 REPRESENTATION AT THE HEARING

- (1) Each individual or entity may be represented at the hearing as follows:
 - (a) Any individual receiving due notice to appear at a hearing may appear at the hearing in his or her own behalf or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.
 - (b) Any general partnership receiving due notice to appear at a hearing may appear at the hearing by any of its partners with written authority from all other partners or may be represented at the hearing by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.
 - (c) Any corporation, limited partnership, limited liability company, state-certified business entity, or any other entity not specifically referenced in this rule 0800-2-13-.09 which received due notice to appear at a hearing shall appear at the hearing only by an attorney at law duly licensed and admitted to practice by the highest court of the state of Tennessee.
- (2) The Commissioner, in his or her discretion, may refuse to allow any person to continue representation or participation in any proceeding before the Commissioner if the Commissioner finds said person guilty of disorderly, disruptive, or unethical conduct during the course of the hearing.
 - (a) Any attorney seeking to appear for or to represent a party to any proceeding before the Commissioner or any other person seeking to assist in the appearance of a party to such proceeding shall cause to be filed, not later than the date of the hearing, a written notice of appearance. Such written notice of appearance shall specify sufficient information necessary to identify the particular proceeding involved and which must include, at least:
 1. the name and address of the employer or insurer; and
 2. the name, address, telephone and facsimile numbers, and BPR number of the attorney or other person filing the notice of appearance.
- (3) All notices of appearance shall be delivered to the Commissioner or mailed to:

Tennessee Department of Labor and Workforce Development
 Division of Workers' Compensation
 Penalty Program
 Andrew Johnson Tower, Second Floor
 710 James Robertson Parkway
 Nashville, TN 37243-0661

- (4) Any notice of appearance received by the Commissioner shall be deemed as having been filed for the purpose of any further proceeding in the same matter before the Commissioner.
 - (a) After the expiration of three (3) days from the date of receipt of a notice of appearance, any notice of hearing, decision, or other hearing-related documentation subsequently mailed by the Commissioner shall be mailed to the attorney or other person who has on file a properly executed notice of appearance.
- (5) Any requests for copies of other documents in any pending matter before the Commissioner shall be subject to a reasonable copy fee.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.10 PRE-HEARING MATTERS

- (1) The names and addresses of all witnesses who may be called at a hearing and a list of all proposed exhibits shall be both filed with the Commissioner and served on opposing counsel at least seven (7) calendar days prior to the date of the hearing.
- (2) Copies of affidavits which may be used at a hearing shall be furnished to opposing counsel at least ten (10) calendar days prior to the date of the hearing.
- (3) Copies of all exhibits which are proposed to be offered shall be made available for viewing by opposing counsel upon request made no less than five (5) calendar days prior to the date of the hearing.
- (4) Either the employer/employer's attorney, insurer/insurer's attorney, or a staff attorney from the Department may request a pre-hearing conference by telephone or in person with the Commissioner. A request for a pre-hearing conference shall be made at least seven (7) calendar days prior to the date of hearing. The Commissioner may, in his or her discretion, grant or decline to grant a request for a pre-hearing conference, limit or expand the matters to be discussed at a pre-hearing conference, or otherwise discuss how to facilitate the orderly process of the hearing. The party requesting the conference shall be responsible for arranging the conference and coordinating the conference with opposing counsel. All discussions with the Commissioner at the pre-hearing conference shall include both the employer/employer's attorney, or the insurer/insurer's attorney and a staff attorney from the Department. The Commissioner may, on his or her own initiative, schedule a pre-hearing conference by telephone or in person with the employer/employer's attorney, or the insurer/insurer's attorney, and the staff attorney from the Department.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-208, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.11 ORDER OF PROCEEDINGS AT THE HEARING

- (1) The agency shall admit and give probative effect to evidence admissible in a Court and may also admit evidence which preserves probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and shall exclude evidence which in its judgment is irrelevant, immaterial, or unduly repetitious.
- (2) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the agency.
- (3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.
- (4) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.12 SCOPE OF EXAMINATION AND RULES OF EVIDENCE

- (1) In any hearing before the Commissioner, witnesses may be examined regarding any matter, not privileged, which is relevant and material to the issues to be determined at such hearing. The rules of evidence applicable at such hearing shall be as provided for in T.C.A. Section 4-5-313.
- (2) The Commissioner may rule on and decide any question concerning the admissibility of evidence or procedural questions of law.
 - (a) It shall not be grounds for objection that testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence;
 - (b) It shall not be grounds for objection that hearsay testimony will be inadmissible at the hearing if, in the discretion of the Commissioner, the testimony is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.
- (3) If an objection to proffered evidence is sustained by the Commissioner, the examining party or attorney may make a specific offer of what the examining party or attorney expects to prove by that evidence.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.13 BURDEN OF PROOF

- (1) The burden of proof at the hearing shall be on the employer or insurer, to prove, by a preponderance of the evidence, that the employer and/or insurer is either not subject to the Workers' Compensation laws or has timely paid all workers' compensation benefits due to an employee.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.14 DETERMINATIONS PURSUANT TO THE HEARING

- (1) If the Commissioner determines that the employer is not subject to the Workers' Compensation Law and has not been subject to the Workers' Compensation Law at any relevant times, then the Commissioner shall issue an Initial Order that all civil penalties assessed against the employer or insurer are void.
- (2) If the Commissioner determines that the employer or insurer either does not owe to an employee any workers' compensation benefits or has timely paid all workers' compensation benefits owed to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an Initial Order that all civil penalties assessed against the employer or insurer are void.
- (3) If the Commissioner determines that the employer or insurer has either not paid or not timely paid all workers' compensation benefits due to an employee as required by the Workers' Compensation Law, then the Commissioner shall issue an Initial Order that a civil penalty equal to twenty-five percent (25%) of the unpaid or untimely paid benefits due to the employee under the Workers' Compensation Law be paid by the employer or or insurer directly to the employee to whom the unpaid or untimely paid benefits are/were owed.

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.15 REVIEW OF INITIAL ORDER

- (1) The employer or insurer shall have the right to file a petition for the Commissioner to review the Initial Order, pursuant to the Tennessee Uniform Administrative Procedures Act.
- (2) Any petition to review the Initial Order must be filed in writing within fifteen (15) calendar days of the date of entry of the Initial Order. Failure to file a petition to review the Initial Order within fifteen (15) calendar days of the date of entry of the Initial Order shall result in the Initial Order becoming a Final Order not subject to further review.
- (3) Any petition to review the Initial Order must state its basis and clearly identify the issue(s) to be reviewed.
- (4) The Commissioner shall conduct said review by considering the parties' review briefs, the contested hearing transcript, and the record as a whole. The Commissioner will not hear oral argument unless specifically requested by the Commissioner. A party may submit new evidence only if such new evidence did not exist or was not available at the time of the contested hearing.
- (5) The Commissioner shall enter a Final Order that decides the petition for review of the Initial Order or remands the matter for further proceedings at the contested hearing level with instruction.

Authority: T.C.A. §§4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.16 JUDICIAL REVIEW

- (1) The employer or insurer has sixty (60) calendar days to file notice of appeal in the Davidson County Chancery Court for judicial review of a Final Order issued by the Commissioner.

Authority: T.C.A. §§4-5-322, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

0800-2-13-.17 PROCEDURE IN OTHER DIVISIONAL PENALTY ASSESSMENTS

- (1) The procedures contained in these Rules are applicable to other civil penalty assessments provided for in Title 50, Chapter 6 and the General Rules of the Workers' Compensation Division of Tennessee. These procedures include, but are not limited to, notice to the alleged violator of the alleged violation and the potential civil penalty(s), right to a contested case hearing, right to petition to review an Initial Order, and the appeal of a Final Order to Davidson County Chancery Court.
- (2) Whenever the Division is assessing a civil penalty, the Division has the authority to hear any dispute as to the assessment of the civil penalty as a contested case and the authority to issue Agency Decisions, Initial Orders, and Final Orders assessing civil penalties and/or deciding reviews or appeals of the assessment of civil penalties.
- (3) Whenever the Division is assessing a civil penalty pursuant to the Workers' Compensation statutes or General Rules of the Workers' Compensation Division of Tennessee, the potential violator shall have the burden of proving by a preponderance of the evidence that the civil penalty should not have been assessed.
- (4) When assessing civil penalties pursuant to, but not limited to, T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, and 50-6-244 and any penalties provided for in the General Rules of the Workers' Compensation Division of Tennessee, the Division may follow the procedures outlined in paragraph (1), has the authority outlined in paragraph (2), and the violator has the burden of proof outlined in paragraph (3).

Authority: T.C.A. §§50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

The proposed rules set out herein were properly filed in the Department of State on the 13th day of October 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 February, 2005. (10-19)

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

CHAPTER 1640-1-19

TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM

Presented herein are proposed rules of the Tennessee Student Assistance Corporation submitted pursuant to T.C.A. Section 4-5-205 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Suite 1950 of Parkway Towers located at 404 James Robertson Parkway, Nashville, TN 37243 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243 and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of this proposed rule, contact: Lonna Hildreth, Tennessee Student Assistance Corporation, Suite 1950, Parkway Towers, 404 James Robertson Parkway, Nashville Tennessee 37243, 615-741-1346.

AMENDMENTS

Paragraph (9) of Rule 1640-1-19-.01, Definitions, is amended by deleting paragraph (9) and renumbering the subsequent definitions following in this section accordingly.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§ 49-4-902 and 49-4-924.*

Renumbered paragraph (9) of Rule 1640-1-19-.01, Definitions, is amended by deleting language after “A student is enrolled” and replacing it with the following language so that the amended paragraph (9) shall read:

- (9) Continuous Enrollment: A student is enrolled in the fall and spring semesters of a single academic year. Enrollment in summer semester or inter-session terms is not required.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§ 49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.01(16), Eligible High School, is amended by deleting the language “is accredited by the Southern Association of Colleges and Schools.”, and adding the “and” with a colon following it, so that subparagraph (b) shall state:

- (b) Any private secondary school that is located in Tennessee and:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.01(16), Eligible High School, is amended by adding the following parts:

- (i) is approved by the State Board of Education as a category 1, 2, or 3 secondary school; or
- (ii) is a candidate for full accreditation status by an accrediting agency approved by the State Board of Education by June 8, 2004 for the purpose of application for Tennessee Hope scholarships for the 2004-05 academic year by students who graduated after January 1, 2003 and prior to December 1, 2004.

Authority: Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§ 49-4-902 and 49-4-924.

Paragraph (16) of Rule 1640-1-19-.01, Eligible High School, is amended by adding the following subparagraphs (c), (d) and (e), so that paragraph (16) shall read:

- (c) A secondary school operated by the United State Department of Defense on a military base that is located in whole or in part in Tennessee;
- (d) An out-of-state public secondary school located in a country bordering Tennessee that Tennessee residents are authorized to attend under T.C.A. § 49-6-3108; or
- (e) An out-of-state boarding school accredited by a regional accrediting association that is attended by a bona fide Tennessee resident.

Authority: Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.

Paragraph (7) of Rule 1640-1-19-.02, Scholarship Award Amounts and Classifications, is amended by deleting the phrase in the last line of the paragraph which states: “reduce the excess by reducing the student’s TELS award”, and replacing it with the following language: “use its institutional policy in reducing the student’s total aid package”, so that paragraph (7) shall state:

- (7) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student’s TELS award as long as the student’s total aid does not exceed the total cost of attendance. In the event that a student’s total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, use its institutional policy in reducing the student’s total aid package.

Authority: Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.

Paragraph (1) of Rule 1640-1-19-.05, Eligibility – Tennessee Hope Scholarship, is amended by deleting the following language: “the later of either the fall semester immediately following or within six (6) months of” and replacing it with the following language, “no later than the fall semester immediately following”, so paragraph (1) shall state:

- (1) In addition to the general requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship, a student shall be admitted to and enrolled in an eligible postsecondary institution no later than the fall semester immediately following:

Authority: Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.

Subparagraph (a) of Rule 1640-1-19-.05 (1), Eligibility – Tennessee Hope Scholarship, is amended by deleting “a Tennessee high school” and replacing it with the following language, “an eligible high school”, so that subparagraph (a) shall state:

- (a) Graduating from an eligible high school;

Authority: Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.

Subparagraph (b) of Rule 1640-1-19-.05(1), Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language: “Graduating from a high school located in Tennessee that is not an eligible high school” so paragraph (b) shall state:

- (b) Graduating from a high school located in Tennessee that is not an eligible high school;

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.05(1), Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language: “Completing high school in a Tennessee home school program”, so as to state:

- (c) Completing high school in a Tennessee home school program;

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (1) of Rule 1640-1-19-.05, Eligibility – Tennessee Hope Scholarship, is amended by adding a new subparagraph (d), so that it shall state:

- (d) Obtaining a GED; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (1) of Rule 1640-1-19-05, Eligibility – Tennessee Hope Scholarship, is amended by adding subparagraph (e), so that it shall state:

- (e) Enrolling in an eligible postsecondary institution in lieu of graduating from an eligible high school.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (a) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the date “January 1, 2004,” and replacing it with the date “December 1, 2003,” so that subparagraph (a) shall state:

- (a) Students graduating from an eligible high school after December 1, 2003, shall be required to:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subpart (i) of Rule 1640-1-19-.05(2)(a)1(i), Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “and achieve a final unweighted grade point average of at least 3.0 in the college core curriculum”, so that subpart (i) shall state:

- (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the date “January 1, 2004,” and replacing it with the date “December 1, 2003,” so that subparagraph (b) shall state:

- (b) Students completing high school in a Tennessee home school program, obtaining a GED or graduating from a Tennessee high school that is not an eligible high school after December 1, 2003, shall be required to:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subpart (i) of Rule 1640-1-19-.05(2)(b)1., Eligibility – Tennessee Hope Scholarship, is amended by modifying the phrase “ACT score of at least 23” to the phrase “ACT score of at least 21” and also the phrase “SAT score of at least 1060” to be amended to the phrase “SAT score of at least 980”, so that subpart (i) shall state:

- (i) Attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date, if such student completed high school in Tennessee home school program or graduated from a high school located in Tennessee that is not an eligible high school; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “a Tennessee high school,” and replacing it with the language “an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school,” and also replacing the year “January 1, 2004,” with the date “December 1, 2003,” so that subparagraph (c) shall state:

- (c) Students graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program, or obtaining a GED after January 1, 2003, but prior to December 1, 2003, are eligible to receive a Tennessee HOPE scholarship beginning the 2004-2005 academic year if the following criteria are met:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subpart (i) of Rule 1640-1-19-.05(2)(c)1., Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “and a final unweighted grade point average of at least 3.0 in the college core curriculum”, so that subpart (i) shall state:

- (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Part 2 of Rule 1640-1-19-.05(2)(c), Eligibility – Tennessee Hope Scholarship, is amended by changing the language “ACT score of at least 23” to “ACT score of at least 21” and changing the language “SAT score of at least 1060” to be “SAT score of at least 980” in part 2, so that part 2 shall state:

2. A student completing high school in a Tennessee home school program or graduating from a high school located in Tennessee that is not an eligible high school shall attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (d) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “a Tennessee high school” and replacing it with the following language “an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school” and continuing with the language already in the subparagraph, so that subparagraph (d) shall state:

- (d) Students entering active duty in the United States Armed Services within two years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program, or obtaining a GED, and otherwise meets criteria outlined in this rule may apply for a TELS award if the student:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph 2 of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by adding subparagraph (e) , so that subparagraph (e) shall state:

- (e) A student, who is a Tennessee citizen and a dependent child of a member of the armed forces engaged in active military service of the United States, or on full-time national guard duty, whose home of record at the time of entry into military service was in Tennessee, shall be eligible for a Tennessee HOPE scholarship as an entering freshman.
 - 1. In order for the student to be eligible for the Tennessee HOPE scholarship, such student must meet all eligibility requirements for such scholarship except that, while the parent was stationed on active military duty outside of Tennessee, the student:
 - (i) Did not reside in Tennessee for one (1) year immediately preceding th date of application for financial assistance;
 - (ii) Is a natural, adopted, or stepchild under the age of 21 years, and is claimed as a dependent on the federal income tax return of a military parent; and
 - (iii) Did not graduate from an eligible high school as defined in Rule 1640-1-19-.01(16), a Tennessee high school that is not an ineligible high school, a Tennessee home school program, or obtain a GED from a state-approved institution or organization.
 - 2. If such student graduated from a high school located outside Tennessee. Such high school shall be considered eligible if the school was:
 - (i) Operated by the government of the United States;
 - (ii) Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 - (iii) Accredited by an accrediting association recognized by the foreign nation in which the school is located.
 - 3. If such student graduated from a high school outside of Tennessee that is not considered an eligible high school, completed high school in a home school program, or obtained a GED, then such student shall: meet eligibility requirements for students graduating from Tennessee high schools that are not eligible high schools.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (a) of Rule 1640-1-19-.07(1), Eligibility – General Assembly Merit Scholarship, is amended by replacing the date “January 1, 2004” with the date December 1, 2003”, so that subparagraph (a) shall state:

- (a) A student graduating from an eligible high school after December 1, 2003, shall:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Part 2 of Rule 1640-1-19-.07(1)(a), Eligibility – General Assembly Merit Scholarship, is amended by deleting it in its entirety, and renumbering the subsequent following parts accordingly.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.07(1), Eligibility – General Assembly Merit Scholarship, is amended by replacing the date “January 1, 2004” with the date “December 1, 2003”, so that subparagraph (b) shall state:

- (b) A student completing high school in a Tennessee home school program after December 1, 2003, or graduating from a high school located in Tennessee that is not an eligible high school after December 1, 2003, shall:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.07(1), Eligibility – General Assembly Merit Scholarship, is amended by replacing the date “January 1, 2004” with the date December 1, 2003”, so that subparagraph (c) shall state:

- (c) A student graduating from an eligible high school after January 1, 2003, but prior to December 1, 2003, and seeking an associate or baccalaureate degree shall have:

Authority: *Public Chapter 840 of the 103rd General Assembly. T.C.A. §§ 49-4-916 and 49-4-924.*

Part 1 of Rule 1640-1-19-.07(1)(c), Eligibility – General Assembly merit Scholarship, is amended by adding the word “and” after the semicolon, so that part 1 shall state:

- 1. Achieve a final overall unweighted high school grade point average of at least 3.75; and

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Part 2 of Rule 1640-1-19-.07(1)(c), Eligibility – General Assembly Merit Scholarship, is amended by deleting part 2 and renumbering the subsequent following parts accordingly.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (1) of Rule 1640-1-19-.08, Eligibility – Tennessee Hope Access Grant, is amended by replacing the date “January 1, 2004” with the date December 1, 2003” so that Paragraph (1) shall state:

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE access grant a student shall have graduated from an eligible high school after December 1, 2003, and:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.08(1), Eligibility – Tennessee Hope Access Grant, is amended by changing the date “January 1, 2004” to “December 1, 2003”, so that subparagraph (c) shall state:

- (c) Graduate from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation;

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (d) of Rule 1640-1-19-.08(1), Eligibility – Tennessee Hope Access Grant, is amended by adding the word “and” after the semicolon, so that subparagraph (d) shall state:

- (d) Achieve a final overall unweighted high school grade point average of at least 2.75; and

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (e) of Rule 1640-1-19-.08(1), Eligibility – Tennessee Hope Access Grant, is amended by deleting subparagraph (e) in its entirety and renumbering the following subparagraphs accordingly.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (4) of Rule 1640-1-19-.10 Retention of Awards – General Requirements, is amended by beginning a new sentence at the end of the third sentence which ends with “whichever is less.”, with the following language: “The student shall achieve a cumulative grade point average of 3.0 at the end of the semester in which the student has attempted one hundred twenty (120) semester hours to continue to receive the scholarship.”, and then continuing on with the subparagraph as already stated, so that subparagraph (4) shall state:

- (4) The attempted credit hour limitation includes remedial and developmental studies and all regular college credit courses attempted after high school graduation. If a student enters the semester with less than 120 semester hours attempted and will surpass the 120 semester hours limit, he or she is eligible for payment for the full number of hours enrolled for that semester. If the student is enrolled in a specific undergraduate degree program that is designed to be more than 120 semester hours in length, the student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less. The student shall achieve a cumulative grade point average of 3.0 at the end of the semester in which the student has attempted one hundred twenty (120) semester hours to continue to receive the scholarship. The student is eligible for payment for the full number of hours enrolled in the final semester. Regardless of the number of hours attempted, once the student has earned a bachelor’s degree, he or she is ineligible for additional TELS awards.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (5) of Rule 1640-1-19-.16, Converting from Full-Time to Part-Time enrollment, is amended by deleting the language: “the amount of the scholarship award shall be reduced in accordance with the provisions of Rule 1640-1-19-.02(4) regarding part-time awards” and replacing it with the following language: “the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student’s record.”, so that subparagraph (5) shall state:

- (5) In the event the change to part-time status is approved, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student’s record.

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

The proposed rules set out herein were properly filed in the Department of State on the 21st day of October 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 February, 2005. (10-37)

PUBLIC NECESSITY RULES

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

- 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)
- 0180 - Department of Financial Institutions - Compliance Division - Public necessity rules pertaining to mortgage lending, loan servicing and loan brokering, rule 0180-17-1-.10 Fees, 10 T.A.R. (October 2004) - Filed September 29, 2004; effective through March 13, 2005. (09-26)
- 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 HEALTH - 1200
COMMUNITY SERVICES DIVISION**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to federal law and state law, certain changes are required to be made to the Department's rules pertaining to Conrad J-1 Visa Waiver physicians. In addition, the Tennessee General Assembly, on April 14, 2004, amended Tenn. Code Ann., Title 68, Chapter 1, Part 1, and empowered the Commissioner of Health to promulgate public necessity rules pertaining to Conrad J-1 Visa Waivers, including the ability to modify specialist types and percentage of specialist placements in the urban areas primary care and specialty providers. Because amendment of these rules is required by an agency of the federal government, promulgation of these rules through ordinary rulemaking procedures might jeopardize the loss of a federal program or funds.

For complete copies of the text of the notice, please contact Alisa Malone, Sixth Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee, 37247, (615) 741-4545.

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE DEPARTMENT OF HEALTH
COMMUNITY SERVICES DIVISION**

**CHAPTER 1200-20-11
RULES AND REGULATIONS GOVERNING THE STATE CONRAD J-1 VISA WAIVER PROGRAM**

AMENDMENTS

Rule 1200-20-11-.02, Definitions, is amended by adding the following language after paragraph (8) entitled "Managed Care Organization (MCO)," and renumbering the remaining paragraphs accordingly, so that, as amended, the paragraph shall read:

- (9) Medicare Dependent Hospital – a federally designated hospital that is a small rural hospital for which Medicare patients comprise a significant percentage of their patients and their revenues.

Authority: *T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.*

Newly-numbered Paragraph (13) entitled "Physician specialist" of Rule 1200-20-11-.02, Definitions, is amended by adding the language "Emergency Medicine" after "Metabolism," adding "Hospitalists" after "Hematology," adding "Neurology" after "Nephrology," and deleting the language "(subject to the restrictions noted herein)," so that as amended, the paragraph shall read:

- (13) Physician specialist – a physician who has completed subspecialty training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Emergency Medicine, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncol-

ogy, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery. Each applicant must be supported by a sponsoring employer.

Authority: T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Rule 1200-20-11-.02, Definitions, is amended by adding the following language after newly-numbered paragraph (14) entitled “Rural areas” and renumbering the remaining paragraphs accordingly, so that, as amended, the paragraph shall read:

- (15) Rural Hospital – a federally designated hospital meeting the guidelines for placement of primary care physicians. Rural Hospitals which are located in counties containing federally designated health professional shortage areas (HPSAs) and/or medically underserved areas (MUAs), either of which must also be located within the top thirty (30) state designated health resource shortage areas (HRSAs) for TennCare, primary care, obstetrics or pediatrics.

Authority: T.C.A. §§ 4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Paragraph (1) of Rule 1200-20-11-.04, Eligibility, is amended by adding the language “Emergency Medicine” after “Critical Care Medicine,” adding “Hospitalists” after “Hematology,” adding “Neurology” after “Nephrology,” and deleting the language “(subject to the restrictions noted herein),” so that as amended, the paragraph shall read:

- (1) The State Conrad J-1 Visa Waiver Program in Tennessee is limited to those primary care physicians who have completed a residency in one of the following medical specialties: Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine, or a physician specialist who has completed subspecialty training in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Emergency Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology, Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or physicians who have completed a residency in General Orthopedic Surgery or General Surgery. Each applicant must be supported by a sponsoring employer.

Authority: T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Rule 1200-20-11-.04, Eligibility, is amended by deleting paragraph (2) in its entirety and renumbering the remaining paragraphs accordingly.

Authority: T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Newly-numbered Paragraph (3) of Rule 1200-20-11-.04, Eligibility, is amended by adding the language “or a Medicare dependent hospital or rural hospital meeting the guidelines for placement of a primary care physician” after “Sole Community hospital,” and deleting the remainder of the language after “federal fiscal year” and adding the following language, so that as amended, the paragraph shall read:

- (3) At the discretion of the Department, the Department will also support and facilitate the placement of one (1) physician specialist per hospital in up to thirty percent (30%) of the slots permitted by federal law between October 1 and June 30 of each federal fiscal year in affiliation with hospitals, as designated by the Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital or a Medicare dependent hospital or a rural hospital meeting the guidelines for placement of a primary care physician either of which must be located in a HPSA or MUA. The top twenty non-psychiatric hospital list will be updated on an annual basis. Each physician specialist must agree to practice their speciality in affiliation with that hospital for a minimum of forty (40) hours per week and for a minimum of three (3) years. If the full complement of thirty percent (30%) of the slots for physician specialists have not been committed by April 1, an additional application from a facility which has already received a physician specialist slot between October 1 and March 31 will be accepted and applications for a physician specialist will also be accepted from Critical Access Hospitals located in a HPSA or MUA from April 1 to June 30 of each federal fiscal year. No more than one-third of the specialist slots may granted in an urban HPSA from October 1 to June 30 of each year. If the full complement of slots permitted by the federal law has not been committed by June 30, the percentage limitations on the number of slots allocated to specialty physicians and on the placement of specialty physicians, set forth above, shall not longer be applicable. After June 30, all slots permitted by the federal law shall be opened to all eligible sponsoring employers for primary care physicians and specialist physicians as previously described, for the final quarter of the year. During the final quarter, priority for the specialist slots is given to specialists but primary care provider applications will be accepted if specialists slots are available and no other specialist provider application has been received and deemed eligible. Health care practitioners who are placed must provide medical care to underserved Tennesseans.

Authority: T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

Newly-numbered Paragraph (5) of Rule 1200-20-11-.04, Eligibility, is amended by adding the language “or a Medicare dependent hospital or a rural hospital meeting the guidelines for placement of a primary care physician” after “Sole Community hospital,” so that, as amended, the paragraph shall read:

- (5) The Department will facilitate the placement of J-1 primary care physicians only in rural areas of the State. The Department will facilitate the placement of physician specialists in affiliation with hospitals, as designated by the Department, that are one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients, or a Rural Referral Center hospital or a Sole Community hospital or a Medicare dependent hospital or a rural hospital meeting the guidelines for placement of a primary care physician either of which must be located in a HPSA or MUA. Physician specialists who request placement as a primary care physician under the State Conrad J-1 Visa Waiver Program will be required to adhere to all the rules and regulations herein specific to primary care physicians.

Authority: T.C.A. §§4-5-202, 4-5-209, 68-1-103, and Public Chapter No. 572 of the Public Acts of 2004.

The public necessity rules set out herein were properly filed in the Department of State on the 22nd day of October, 2004, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 5th day of April, 2005. (10-39)

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

The following proposed amendments to the rules of the Tennessee Student Assistance Corporation are hereby submitted for promulgation under the provision of the Uniform Administrative Procedures Act, Tennessee Code Annotated Title 4, Section 5, Part 209 and Tennessee Code Annotated Title 49, Section 4, Part 924.

The 103rd General Assembly passed Public Chapters 840 and 881 on May 21, 2004, that called for certain changes to be made to Tennessee Code Annotated Title 49, Chapter 4, Part 9 with an effective date of June 8, 2004. In the absence of Public Necessity Rules, the Tennessee Student Assistance Corporation will not be able to satisfy its time-sensitive obligations as set out by the passage of Public Chapters 840 and 881 of the 103rd General Assembly.

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

Michael Roberts, Executive Director
Tennessee Student Assistance Corporation

PUBLIC NECESSITY RULES**OF****TENNESSEE STUDENT ASSISTANCE CORPORATION****CHAPTER 1640-1-19****TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM****AMENDMENTS**

Paragraph (9) of Rule 1640-1-19-.01, Definitions, is amended by deleting paragraph (9) and renumbering the subsequent definitions following in this section accordingly.

Authority: Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§ 49-4-902 and 49-4-924.

Renumbered paragraph (9) of Rule 1640-1-19-.01, Definitions, is amended by deleting language after “A student is enrolled” and replacing it with the following language so that the amended paragraph (9) shall read:

- (9) Continuous Enrollment: A student is enrolled in the fall and spring semesters of a single academic year. Enrollment in summer semester or inter-session terms is not required.

Authority: Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§ 49-4-902 and 49-4-924.

Subparagraph (b) of Rule 1640-1-19-.01(16), Eligible High School, is amended by deleting the language “is accredited by the Southern Association of Colleges and Schools.”, and adding the “and” with a colon following it, so that subparagraph (b) shall state:

- (b) Any private secondary school that is located in Tennessee and:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.01(16), Eligible High School, is amended by adding the following parts:

- (i) is approved by the State Board of Education as a category 1, 2, or 3 secondary school; or
- (ii) is a candidate for full accreditation status by an accrediting agency approved by the State Board of Education by June 8, 2004 for the purpose of application for Tennessee Hope scholarships for the 2004-05 academic year by students who graduated after January 1, 2003 and prior to December 1, 2004.

Authority: *Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§ 49-4-902 and 49-4-924.*

Paragraph (16) of Rule 1640-1-19-.01, Eligible High School, is amended by adding the following subparagraphs (c), (d) and (e), so that paragraph (16) shall read:

- (c) A secondary school operated by the United State Department of Defense on a military base that is located in whole or in part in Tennessee;
- (d) An out-of-state public secondary school located in a country bordering Tennessee that Tennessee residents are authorized to attend under T.C.A. § 49-6-3108; or
- (e) An out-of-state boarding school accredited by a regional accrediting association that is attended by a bona fide Tennessee resident.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (7) of Rule 1640-1-19-.02, Scholarship Award Amounts and Classifications, is amended by deleting the phrase in the last line of the paragraph which states: “reduce the excess by reducing the student’s TELS award”, and replacing it with the following language: “use its institutional policy in reducing the student’s total aid package”, so that paragraph (7) shall state:

- (7) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student’s TELS award as long as the student’s total aid does not exceed the total cost of attendance. In the event that a student’s total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, use its institutional policy in reducing the student’s total aid package.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (1) of Rule 1640-1-19-.05, Eligibility – Tennessee Hope Scholarship, is amended by deleting the following language: “the later of either the fall semester immediately following or within six (6) months of” and replacing it with the following language, “no later than the fall semester immediately following”, so paragraph (1) shall state:

- (1) In addition to the general requirements of Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE scholarship, a student shall be admitted to and enrolled in an eligible postsecondary institution no later than the fall semester immediately following:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (a) of Rule 1640-1-19-.05 (1), Eligibility – Tennessee Hope Scholarship, is amended by deleting “a Tennessee high school” and replacing it with the following language, “an eligible high school”, so that subparagraph (a) shall state:

- (a) Graduating from an eligible high school;

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.05(1), Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language: “Graduating from a high school located in Tennessee that is not an eligible high school” so paragraph (b) shall state:

- (b) Graduating from a high school located in Tennessee that is not an eligible high school;

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.05(1), Eligibility – Tennessee Hope Scholarship, is amended by deleting it in its entirety and replacing it with the following language: “Completing high school in a Tennessee home school program”, so as to state:

- (c) Completing high school in a Tennessee home school program;

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (1) of Rule 1640-1-19-.05, Eligibility – Tennessee Hope Scholarship, is amended by adding a new subparagraph (d), so that it shall state:

- (d) Obtaining a GED; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (1) of Rule 1640-1-19-05, Eligibility – Tennessee Hope Scholarship, is amended by adding subparagraph (e), so that it shall state:

- (e) Enrolling in an eligible postsecondary institution in lieu of graduating from an eligible high school.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (a) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the date “January 1, 2004,” and replacing it with the date “December 1, 2003,” so that subparagraph (a) shall state:

- (a) Students graduating from an eligible high school after December 1, 2003, shall be required to:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subpart (i) of Rule 1640-1-19-.05(2)(a)1(i), Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “and achieve a final unweighted grade point average of at least 3.0 in the college core curriculum”, so that subpart (i) shall state:

- (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the date “January 1, 2004,” and replacing it with the date “December 1, 2003,” so that subparagraph (b) shall state:

- (b) Students completing high school in a Tennessee home school program, obtaining a GED or graduating from a Tennessee high school that is not an eligible high school after December 1, 2003, shall be required to:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subpart (i) of Rule 1640-1-19-.05(2)(b)1., Eligibility – Tennessee Hope Scholarship, is amended by modifying the phrase “ACT score of at least 23” to the phrase “ACT score of at least 21” and also the phrase “SAT score of at least 1060” to be amended to the phrase “SAT score of at least 980”, so that subpart (i) shall state:

- (i) Attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date, if such student completed high school in Tennessee home school program or graduated from a high school located in Tennessee that is not an eligible high school; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “a Tennessee high school,” and replacing it with the language “an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school,” and also replacing the year “January 1, 2004,” with the date “December 1, 2003,” so that subparagraph (c) shall state:

- (c) Students graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program, or obtaining a GED after January 1, 2003, but prior to December 1, 2003, are eligible to receive a Tennessee HOPE scholarship beginning the 2004-2005 academic year if the following criteria are met:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subpart (i) of Rule 1640-1-19-.05(2)(c)1., Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “and a final unweighted grade point average of at least 3.0 in the college core curriculum”, so that subpart (i) shall state:

- (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Part 2 of Rule 1640-1-19-.05(2)(c), Eligibility – Tennessee Hope Scholarship, is amended by changing the language “ACT score of at least 23” to “ACT score of at least 21” and changing the language “SAT score of at least 1060” to be “SAT score of at least 980” in part 2, so that part 2 shall state:

2. A student completing high school in a Tennessee home school program or graduating from a high school located in Tennessee that is not an eligible high school shall attain a composite ACT score of a least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (d) of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by deleting the language “a Tennessee high school” and replacing it with the following language “an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school” and continuing with the language already in the subparagraph, so that subparagraph (d) shall state:

- (d) Students entering active duty in the United States Armed Services within two years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program, or obtaining a GED, and otherwise meets criteria outlined in this rule may apply for a TELS award if the student:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph 2 of Rule 1640-1-19-.05(2), Eligibility – Tennessee Hope Scholarship, is amended by adding subparagraph (e) , so that subparagraph (e) shall state:

- (e) A student, who is a Tennessee citizen and a dependent child of a member of the armed forces engaged in active military service of the United States, or on full-time national guard duty, whose home of record at the time of entry into military service was in Tennessee, shall be eligible for a Tennessee HOPE scholarship as an entering freshman.
 1. In order for the student to be eligible for the Tennessee HOPE scholarship, such student must meet all eligibility requirements for such scholarship except that, while the parent was stationed on active military duty outside of Tennessee, the student:
 - (i) Did not reside in Tennessee for one (1) year immediately preceding th date of application for financial assistance;
 - (ii) Is a natural, adopted, or stepchild under the age of 21 years, and is claimed as a dependent on the federal income tax return of a military parent; and
 - (iii) Did not graduate from an eligible high school as defined in Rule 1640-1-19-.01(16), a Tennessee high school that is not an ineligible high school, a Tennessee home school program, or obtain a GED from a state-approved institution or organization.
 2. If such student graduated from a high school located outside Tennessee. Such high school shall be considered eligible if the school was:
 - (i) Operated by the government of the United States;
 - (ii) Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 - (iii) Accredited by an accrediting association recognized by the foreign nation in which the school is located.

3. If such student graduated from a high school outside of Tennessee that is not considered an eligible high school, completed high school in a home school program, or obtained a GED, then such student shall: meet eligibility requirements for students graduating from Tennessee high schools that are not eligible high schools.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (a) of Rule 1640-1-19-.07(1), Eligibility – General Assembly Merit Scholarship, is amended by replacing the date “January 1, 2004” with the date December 1, 2003”, so that subparagraph (a) shall state:

- (a) A student graduating from an eligible high school after December 1, 2003, shall:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Part 2 of Rule 1640-1-19-.07(1)(a), Eligibility – General Assembly Merit Scholarship, is amended by deleting it in its entirety, and renumbering the subsequent following parts accordingly.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (b) of Rule 1640-1-19-.07(1), Eligibility – General Assembly Merit Scholarship, is amended by replacing the date “January 1, 2004” with the date “December 1, 2003”, so that subparagraph (b) shall state:

- (b) A student completing high school in a Tennessee home school program after December 1, 2003, or graduating from a high school located in Tennessee that is not an eligible high school after December 1, 2003, shall:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.07(1), Eligibility – General Assembly Merit Scholarship, is amended by replacing the date “January 1, 2004” with the date December 1, 2003”, so that subparagraph (c) shall state:

- (c) A student graduating from an eligible high school after January 1, 2003, but prior to December 1, 2003, and seeking an associate or baccalaureate degree shall have:

Authority: *Public Chapter 840 of the 103rd General Assembly. T.C.A. §§ 49-4-916 and 49-4-924.*

Part 1 of Rule 1640-1-19-.07(1)(c), Eligibility – General Assembly merit Scholarship, is amended by adding the word “and” after the semicolon, so that part 1 shall state:

1. Achieve a final overall unweighted high school grade point average of at least 3.75; and

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Part 2 of Rule 1640-1-19-.07(1)(c), Eligibility – General Assembly Merit Scholarship, is amended by deleting part 2 and renumbering the subsequent following parts accordingly.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Paragraph (1) of Rule 1640-1-19-.08, Eligibility – Tennessee Hope Access Grant, is amended by replacing the date “January 1, 2004” with the date December 1, 2003” so that Paragraph (1) shall state:

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE access grant a student shall have graduated from an eligible high school after December 1, 2003, and:

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (c) of Rule 1640-1-19-.08(1), Eligibility – Tennessee Hope Access Grant, is amended by changing the date “January 1, 2004” to “December 1, 2003”, so that subparagraph (c) shall state:

- (c) Graduate from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation;

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (d) of Rule 1640-1-19-.08(1), Eligibility – Tennessee Hope Access Grant, is amended by adding the word “and” after the semicolon, so that subparagraph (d) shall state:

- (d) Achieve a final overall unweighted high school grade point average of at least 2.75; and

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (e) of Rule 1640-1-19-.08(1), Eligibility – Tennessee Hope Access Grant, is amended by deleting subparagraph (e) in its entirety and renumbering the following subparagraphs accordingly.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (4) of Rule 1640-1-19-.10 Retention of Awards – General Requirements, is amended by beginning a new sentence at the end of the third sentence which ends with “whichever is less.”, with the following language: “The student shall achieve a cumulative grade point average of 3.0 at the end of the semester in which the student has attempted one hundred twenty (120) semester hours to continue to receive the scholarship.”, and then continuing on with the subparagraph as already stated, so that subparagraph (4) shall state:

- (4) The attempted credit hour limitation includes remedial and developmental studies and all regular college credit courses attempted after high school graduation. If a student enters the semester with less than 120 semester hours attempted and will surpass the 120 semester hours limit, he or she is eligible for payment for the full number of hours enrolled for that semester. If the student is enrolled in a specific undergraduate degree program that is designed to be more than 120 semester hours in length, the student is eligible for a total of 136 semester hours attempted, or the number of hours required for graduation, whichever is less. The student shall achieve a cumulative grade point average of 3.0 at the end of the semester in which the student has attempted one hundred twenty (120) semester hours to continue to receive the scholarship. The student is eligible for payment for the full number of hours enrolled in the final semester. Regardless of the number of hours attempted, once the student has earned a bachelor’s degree, he or she is ineligible for additional TELS awards.

Authority: *Public Chapters 840 and 881 of the 103rd General Assembly. T.C.A. §§49-4-902 and 49-4-924.*

Subparagraph (5) of Rule 1640-1-19-.16, Converting from Full-Time to Part-Time enrollment, is amended by deleting the language: "the amount of the scholarship award shall be reduced in accordance with the provisions of Rule 1640-1-19-.02(4) regarding part-time awards" and replacing it with the following language: "the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record.", so that subparagraph (5) shall state:

- (5) In the event the change to part-time status is approved, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the Corporation. Additionally, the eligible postsecondary institution shall notify the Corporation of the charge back, which shall be noted on the student's record.

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

The public necessity rules set out herein were properly filed in the Department of State on the 21st day of October, 2004, and will become effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 4th day of April, 2005. (10-38)

RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 DIVISION OF INSURANCE

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to T.C.A. §50-6-504(c). 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 Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. CST on the 17th day of December, 2004.

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

For a copy of this notice of rulemaking hearing, contact: John F. Morris, Chief Counsel for Insurance and TennCare or Tracey Gentry Harney, Staff Attorney, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-54 SELF-INSURED WORKERS' COMPENSATION POOLS

NEW RULES

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0780-1-54-.01 PURPOSE AND SCOPE.

The purpose of this Chapter is to regulate employers that choose to pool their workers' compensation liabilities pursuant to T.C.A. §50-6-405(c). This Chapter shall not apply to governmental tort liability pools established pursuant to Tenn. Code Ann. Title 20, Chapter 2.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.02 DEFINITIONS.

- (1) "Administrator" means any person engaged by a pool to carry out the policies established by the pool's board of trustees and to provide daily management of the pool.
- (2) "Certificate of Authority" means a license issued by the Commissioner to a pool granting it the authority to insure the workers' compensation liabilities of its members for such members' employees in this State.
- (3) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (4) "Department" means the Tennessee Department of Commerce and Insurance.
- (5) "Designated Rate Service Organization" means the rate service organization designated by the Commissioner pursuant to T.C.A. §56-5-320.
- (6) "Fund year" means the calendar year during which workers' compensation insurance liabilities and expenses associated therewith are incurred by a pool. Each fund year shall be considered separately for purposes of allocated losses and expenses and for reserving for and paying such losses and expenses.
- (7) "IBNR" or "Incurred But Not Reported" means those claims which have been incurred by an insured of the pool but which have not been submitted to the pool for payment of workers' compensation benefits.
- (8) "Insolvent" or "insolvency" means a pool whose liabilities exceed the value of its assets and/or that has stopped paying debts in the ordinary course of business or is unable to pay them as its debts fall due, as may be shown by an excess of the pool's required liability reserves and other liabilities over its assets.
- (9) "Insurance Law" means any law administered by the Commissioner affecting the business of insurance in this state, including, but not limited to T.C.A. §50-6-405 and T.C.A. §§56-1-101, *et. seq.* as well as any rules promulgated thereunder.
- (10) "Known Claims" means claims that have been incurred by an insured of the pool and identified to, or submitted to, the pool for payment of workers' compensation benefits.
- (11) "Loss reserves" means funds of the pool immediately available to pay:
 - (a) known or open claims and expenses associated therewith;
 - (b) IBNR and expenses associated therewith;
 - (c) unearned premiums;
 - (d) bad or uncollectible debts; and

- (e) expenses associated with run-off or termination of a pool.
- (12) “Manual Rate” means the product of the advisory prospective loss cost and a pool’s loss cost multiplier for each individual self-insured pool.
- (13) “NAIC” means the National Association of Insurance Commissioners.
- (14) “Net premium” means premium derived from standard premium adjusted by any advance premium discounts.
- (15) “Person” means any natural or artificial person including, but not limited to, an individual, partnership, association, trust, or corporation.
- (16) “Qualified Actuary” means an individual who:
 - (a) Is a member in good standing of the American Academy of Actuaries and an associate or fellow of the Casualty Actuarial Society;
 - (b) Is qualified to sign statements of actuarial opinion for workers’ compensation insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;
 - (c) Is familiar with the reserve requirements applicable to workers’ compensation insurance companies; and
 - (d) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
 - 1. Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; or
 - 2. Been found guilty of fraudulent or dishonest practices; or
 - 3. Demonstrated his or her incompetence, lack of cooperation with the Commissioner, or untrustworthiness to act as a qualified actuary; or
 - 4. Submitted to the Commissioner during the past five (5) years an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provision of this chapter including standards set by the Actuarial Standards Board; or
 - 5. Resigned or been removed as an actuary within the past five (5) years as a result of failure to adhere to generally acceptable actuarial standards.
- (17) “Pool” means any group of employers who, for the purpose of qualifying as self-insurers, pool their liabilities related to workers’ compensation insurance, as provided in Title 50, Chapter 6 of Tennessee Code Annotated.
- (18) “Sponsoring association” means an association which has given a group of ten (10) or more employer members of the association permission to pool their liabilities under Tenn. Code Ann. Title 50, Chapter 6 for the purposes of qualifying as self-insurers.

- (19) "Standard premium" means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.
- (20) "Third party administrator" means a person which contracts with a pool to provide services relating to any of the following:
- (a) Claim adjusting;
 - (b) Safety engineering;
 - (c) Compilation of statistics and the preparation of reports relating to premium, loss and taxes;
 - (d) Preparation of other required self-insurance reports;
 - (e) Development of members' premiums, assessments, and other fees; or
 - (f) Administration of a claim fund.
- (21) "Unearned premium" means the portion of the written premium applicable to the unexpired or unused part of the policy period for which the premium has been paid.
- (22) "Workers' compensation" means both workers' compensation and employer's liability, as prescribed under Title 50, Chapter 6 of the Tennessee Code Annotated.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.03 CERTIFICATE OF AUTHORITY REQUIRED.

No person shall act as a pool without a certificate of authority issued to it by the Commissioner.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.04 APPLICATION FOR CERTIFICATE OF AUTHORITY.

- (1) To apply for a certificate of authority, a pool shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a non-refundable filing fee as set under T.C.A. §56-4-101(a)(1). A person in this state applying for a certificate of authority to act as a pool shall, under penalty of refusal, suspension or revocation of the certificate of authority, declare therein that the statements made in the application are true, correct and complete to the best of the person's knowledge and belief under penalty of perjury.
- (2) An application for a certificate of authority shall include the following documentation, together with such other information or documentation as the Commissioner may require:
- (a) Organizational documents and information.
 - 1. The articles of incorporation, trust agreement, or any other similar document from which the pool is formed;

2. The by-laws of the pool;
 3. The mailing addresses and physical location of all of the pool's offices in Tennessee, including the address where the books and records of the pool will be located;
 4. The name, address, and telephone number of each member; and
 5. Documentation evidencing designation of the board of trustees, administrator, and, if applicable, third party administrator.
- (b) Written contracts.
1. All contracts between the pool and the pool's expected administrator;
 2. All contracts between the pool and the pool's expected third party administrator;
 3. Any and all royalty agreements or contracts;
 4. Any and all service fee agreements or contracts; and
 5. The errors and omissions insurance policies for the board of trustees issued to protect the pool from damages, if any.
- (c) Operational documents.
1. Any operational and/or claims manual to be used by the pool;
 2. Documentation establishing the rate at which insurance producers will be commissioned to solicit members to join the pool; and
 3. Underwriting guidelines established by the board of trustees.
- (d) Financial documents.
1. Documentation in a form acceptable to the Commissioner evidencing the financial ability of the pool to pay the obligations of the pool and to pay the workers' compensation obligations of its members, as provided in this Chapter;
 2. Documentation evidencing proof of payment to the pool by each member of the initial premium due for such member; and
- (e) Member documents.
1. Each member's application for membership into the pool;
 2. Indemnity agreements between the pool and each member establishing each member's joint and several liability to the pool for all expenses, liabilities, and claims asserted against the pool by any person or entity;
 3. Documentation evidencing the current experience modifier of each member;
 4. Documentation evidencing loss run data for each member for the past four (4) years; and

5. A financial statement for the most recent fiscal year ended over ninety (90) days prior to the application and for each quarter ended more than thirty (30) days prior. The pool may file the following types of financial statements in order to comply with this Rule:
 - (i) Audited financial statement prepared by a certified public accountant;
 - (ii) Compilation report prepared by a certified public accountant; or
 - (iii) Tennessee Franchise and Excise Tax Return including Form 1120.
- (f) Sponsoring association documents.
1. The articles of incorporation or other similar document from which the sponsoring association is formed;
 2. The by-laws, constitution, and procedures of the sponsoring association;
 3. Documentation evidencing the fact that the sponsoring association has members that support the association by regular payment of dues on an annual, semiannual, quarterly or monthly basis;
 4. A certification signed by the president of the sponsoring association that the association was created in good faith for purposes other than that of creating a self-insurance pool; and
 5. Documentation evidencing that the sponsoring association has reviewed the pool's application for a certificate of authority and believes and represents to the Commissioner that the statements made in the application and the documents accompanying the application comply with the sponsoring association's constitution, by-laws and procedures and applicable state statutes and regulations.
- (3) To obtain and maintain its certificate of authority, a pool shall comply with the following requirements as well as any other requirements established by law or regulation:
- (a) Each pool shall provide proof to the Commissioner that it is comprised of ten (10) or more employers of the same trade or professional association, and that the member employers are engaged in the same trade or profession as the other members.
 1. The Commissioner may refuse to issue a certificate of authority to a pool upon finding that the different class codes which the pool would be self-insuring are of such diversity or type of risk that it would not be in the interest of the members, the members' employees, or the public to allow a pool to self-insure such diverse class codes.
 2. The Commissioner may, after notice and hearing, revoke the certificate of authority upon finding that the pool is self-insuring class codes of such diversity and risk that it is not in the interest of the members, the members' employees, or the public to allow a pool to self-insure such diverse class codes. In lieu of revoking a pool's certificate of authority, the Commissioner may order a pool to refuse an application for membership, cancel or non-renew a member upon making such findings.
 3. Pools that possess a certificate of authority as of January 1, 2005 do not have to comply with Subparagraph (a) except to the extent they accept new members after such date.

- (b) Upon request by the Commissioner, a pool shall provide proof of an ability to pay all claims, liabilities and legal obligations of the pool, including all open workers' compensation claims submitted by employees of the members of the pool. Such proof shall be established by the following documents:
 - 1. The pool's annual audited financial reports. Such annual audited financial reports shall adhere to the requirements for financial reports provided in Chapter 0780-1-65;
 - 2. A certification from a qualified actuary that the pool has adequately reserved for its losses, including those losses that have been incurred but not reported;
 - 3. Each member's financial condition in the form of an annual audited financial statement, compilation report prepared by a certified public accountant, a Tennessee Franchise and Excise Tax Return including Form 1120, or such other financial statements as the Commissioner may accept; and
 - 4. Such other documents the Commissioner finds relevant to determining whether the pool can pay all of its claims, liabilities and legal obligations of the pool.
 - (c) Each pool shall obtain both a specific and aggregate excess insurance policy in a form and amount acceptable to the Commissioner.
 - 1. Each pool shall file with the Commissioner a certification from a qualified actuary that the amount of specific and aggregate excess insurance procured by the pool is actuarially sound.
 - 2. The Commissioner may disallow the use of a specific and/or aggregate excess insurance policy upon determining it is not sufficient to meet the pool's responsibilities. In making this determination, the Commissioner may consider the pool's size, types of employments, years in existence and other relevant factors.
 - (d) Each pool shall enter into indemnity agreements with its members jointly and severally binding the pool and each member thereof to meet the financial obligations of the pool.
 - 1. The indemnity agreement shall be on a form prescribed by the Commissioner and shall include minimum uniform substantive provisions prescribed by the Commissioner.
 - 2. Subject to the Commissioner's prior written approval, a pool may add other provisions needed because of its particular circumstances.
 - 3. The agreement shall be irrevocable for the period during and for which the member receives workers' compensation coverage through the pool, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the pool.
 - (e) Each pool shall have an estimated annual standard premium of at least one million dollars (\$1,000,000) in order to obtain and maintain a certificate of authority.
 - (f) The Commissioner may require a pool to submit any documents necessary to verify the information contained in or documents submitted with the application.
- (4) Before approving an application for a certificate of authority filed under this Rule, the Commissioner shall find that the person applying:

- (a) Has not committed any act that is a ground for denial, suspension or revocation set forth in Rule 0780-1-54-.22;
 - (b) Has the financial ability to pay the obligations of the pool and to pay the workers' compensation obligations of its members;
 - (c) Has complied with all requirements for obtaining and maintaining a certificate of authority issued to a pool by the Commissioner; and
 - (d) Has paid the fees set forth in this Rule.
- (5) In the event the Commissioner determines that an applicant does not qualify for a certificate of authority, the Commissioner shall notify the applicant in writing of the denial and the basis thereof.

Authority: T.C.A. §§50-6-405(c).

0780-1-54-.05 CONTINUED REPORTING REQUIREMENTS.

Any amendments to the organizational documents or written contracts required to be provided to the Commissioner by Rule 0780-1-54-.04 shall be filed with the Commissioner with a non-refundable filing fee of ninety dollars (\$90.00) no later than thirty (30) days prior to the proposed effective date of the amendments.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.06 BOARD OF TRUSTEES.

- (1) Each pool shall be operated by a board of trustees which shall consist of not less than five (5) persons whom the members of a pool elect for stated terms of office. No less than two-thirds (2/3) of the members of the board shall be comprised of members of the pool. The pool's administrator and any owner, officer, employee of, or any other person affiliated or contracting with the administrator shall not serve on the board of trustees. All members of the board of trustees shall be residents of this State or officers of corporations authorized to do business in this State. The board of trustees of each pool shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the pool.
- (2) The board of trustees shall:
 - (a) Maintain responsibility for all monies collected or disbursed from the pool
 - (b) Conduct regular meetings, maintain minutes of such meetings and make such minutes available to the Commissioner. The board of trustees shall meet no less than once every quarter.
 - (c) Have the sole and undelegable authority to approve an application for membership into the pool and the initial premium of a new member.
 - 1. The board of trustees may choose to delegate the decision to admit new members into the pool to one (1) or more board members as long as those board members are also members of the pool.

2. The decision whether to accept new members into the pool must be based on the pool's approved underwriting guidelines.
 3. The entire board of trustees remains liable for the decision to appoint new members even if that decision is delegated to one (1) or more board members.
- (d) Establish an investment policy for the pool. Such policy shall address credit, quality of investments, maximum maturity of investments and such other matters as the board deems appropriate.
 - (e) Designate an administrator to carry out the policies established by the board of trustees and to provide daily management of the pool. The areas of authority delegated to the administrator must be delineated in the written minutes of its meetings or in the written contract between the pool and the administrator.
 - (f) Appoint a third party administrator, should the board in its discretion desire to do so, for certain daily operations of the pool to be delegated.
 - (g) Retain an independent certified public accountant to prepare the statement of financial condition required by Rule 0780-1-54-.09.
- (3) The board of trustees shall not:
 - (a) Extend credit to individual members for payment of premium, except pursuant to payment plans approved in writing by the Commissioner prior to the extension of credit; or
 - (b) Allow anyone to borrow monies from the pool.
 - (4) Each pool shall include in its bylaws or articles of incorporation the method by which a trustee can be replaced or terminated.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.07 ADMINISTRATORS.

- (1) No person shall act as an administrator for a pool without a license issued by the Commissioner. Persons acting as an administrator for an existing pool as of January 1, 2005, shall have twelve (12) months in which to obtain such license from the Commissioner.
- (2) To apply for a license, an applicant shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a non-refundable filing fee as set under T.C.A. §56-4-101(a)(1). A person applying for a license to act as an administrator shall, under penalty of refusal, suspension or revocation of the certificate of authority, declare therein that the statements made in the application are true, correct and complete to the best of the person's knowledge and belief and upon penalty of perjury.
- (3) An application for a license shall include the following documentation, together with such other information or documentation as the Commissioner may require:
 - (a) The most recent financial condition of the applicant in the form of an audited financial statement, a compilation report prepared by a certified public accountant, a Tennessee Franchise and Excise Tax Return, or such other financial statements that the Commissioner may accept;

- (b) Evidence that the applicant has obtained a fidelity bond in the amount of two hundred thousand dollars (\$200,000) written by a company licensed to transact insurance in this state;
 - (c) Evidence that the applicant has obtained an errors and omissions insurance policy for the protection of the pool in the amount of two hundred thousand dollars (\$200,000) written by a company licensed to transact insurance in this state; and
 - (d) NAIC Biographical Data forms completed by the officers and directors of the applicant.
- (4) The Commissioner may deny an application for a license issued under this Rule upon finding that the applicant does not have sufficient experience or qualification to provide services as an administrator to a pool, or for such other grounds enumerated in Rule 0780-1-54-.22. In reviewing an application, the Commissioner may consider the specific services which would be performed by the applicant for the pool.
 - (5) Each pool shall enter into a written contract with the administrator setting forth with specificity the functions of the administrator in their entirety, and the entire amount of compensation to be paid to the administrator for the services rendered to the pool.
 - (6) No administrator or its employees or the pool's board of trustees shall accept, or be the beneficiary of, either directly or remotely, any fee, brokerage, or commission, gift, or other consideration for or on account of any loan, deposit, sale, payment, exchange, or reinsurance transaction made by or in behalf of such pool, or be pecuniarily interest in any such purchase, sale, loan, either as borrower, principle, coprinciple, agent, or beneficiary, except that if a member, such person shall be entitled to all of the benefits accruing under the terms of the membership.
 - (7) No administrator or its employee or the pool's board of trustees shall take or receive for their own use any fee, brokerage, commission, gift or other consideration of the pool except for reasonable compensation for services performed or sales or purchases made to or for the pool in accordance with the terms of the administrator contract approved by the Commissioner. No administrator or its employee or the pool's board of trustees shall collect a commission for the procurement of excess insurance for the pool.

Authority: *T.C.A. §50-6-405(c).*

0780-1-54-.08 MEMBERS OF THE POOL.

- (1) The board of trustees shall establish underwriting guidelines with respect to the addition of members to the pool. Each pool shall file such guidelines and any amendments thereto with the Commissioner no later than thirty (30) days prior to their proposed effective date.
- (2) A person joining a pool as a member shall:
 - (a) Submit an application for membership to the board of trustees or its administrator;
 - (b) Enter into an indemnity agreement binding such person jointly and severally to the financial obligations of the pool incurred during a fund year in which the person was a member of the pool, as required by Rule 0780-1-54-.04(3)(d); and
 - (c) Pay to the Commissioner a sum required by the pool not less than twenty-five percent (25%) of the member's projected first year annual net premium. Such payment shall be in addition to the premium paid by the member for the first year of membership in the pool, and shall be kept on deposit by the Commissioner for the duration of the member's membership in the pool and a

reasonable time thereafter. Such amount is refundable to the member upon the termination or cancellation of the member's membership in the pool minus any amount owed by the member to the pool once the pool establishes that there is no reasonable likelihood that an assessment will be necessary for any fund year in which the person was a member.

1. Members of existing pools as of January 1, 2005, shall be given additional time to make their deposit with the Commissioner. Each existing member shall pay twenty-five percent (25%) of its 2005 first quarter premium to the Commissioner on or before January 1, 2006.
- (3) No applicant shall become a member of a pool until the board of trustees for the pool determines that the applicant meets the current and approved underwriting guidelines and approves the membership of the applicant.
 - (a) If the Commissioner determines that a member does not qualify under a pool's current and approved underwriting guidelines, the Commissioner may order the pool to cancel the membership of the non-qualifying member.
 - (b) Any person aggrieved by an order of the Commissioner issued under Subparagraph (a) may request a hearing to appeal such an order. Such request shall be filed in writing with the Commissioner within fifteen (15) days of the entry of the order.
 - (4) Membership and coverage of a pool member may take effect no earlier than each member's date of approval by the board of trustees. The pool shall notify the Commissioner within ten (10) days of granting membership to a new member, and shall file a copy of the new member's application and indemnity agreement.
 - (5) Each member's application for membership and its document evidencing approval to belong to the pool shall be maintained as permanent records of the pool.
 - (6) No approval for membership in a pool may be granted to, nor shall any claims be paid on behalf of, any person who has not completed, signed and notarized the indemnity agreement required by Rule 0780-1-54-.04(3)(d).
 - (7) Individual members of a pool shall be subject to cancellation by the pool pursuant to the pool's by-laws. In addition, individual members may elect to terminate their participation in the pool at any time. The pool shall notify the Commissioner and the Commissioner of Labor and Workforce Development of the termination or cancellation of a member within ten (10) days of such cancellation or termination and shall maintain coverage of each cancelled or terminated member for a period of thirty (30) days after such notice unless the pool is notified sooner by the Commissioner of Labor and Workforce Development that the cancelled or terminated member has procured workers' compensation insurance through an insurer, has become a licensed self-insurer, or has become a member of another pool.
 - (8) The pool shall pay all workers' compensation benefits for which each member incurs liability during the member's period of membership in the pool. Notwithstanding the foregoing, a pool may only pay workers' compensation benefits for claims incurred by employees that meet the requirements of T.C.A. §50-6-115. Each member shall attest to the pool annually that it complies with the extraterritorial requirements of T.C.A. §50-6-115.
 - (9) A pool shall cancel a member that cannot promptly pay its premiums when they become due or in accordance with the pool's cancellation policy. A pool shall terminate a member that is more than one hundred twenty (120) days late in making a premium payment. A pool shall cancel a member that does not pay its assessments when due.

- (10) A member who elects to terminate its membership or is cancelled by a pool remains jointly and severally liable for the financial obligations of the pool and its members incurred during any fund year in which the person was a member of the pool.
- (11) The insolvency, bankruptcy, or a member's refusal to pay does not relieve the pool or any other members of liability for the payment of any financial obligations, liabilities or workers' compensation benefits incurred by the pool for such insolvent, bankrupt or refusing member during that member's period of membership.
- (12) The pool shall file with the Commissioner on or before the day it is required to file its audited financial statement a copy of the financial condition of each member of the pool for the most recently ended fiscal year. The statement of financial condition can be an annual audited financial statement, a compilation report prepared by a certified public accountant, a Tennessee Franchise and Excise Tax Return including a Form 1120, or such other financial statements that the Commissioner may accept.

Authority: *T.C.A. §50-6-405(c) and T.C.A. §50-6-115.*

0780-1-54-.09 FINANCIAL STATEMENTS AND OTHER REPORTS.

- (1) When a pool determines that they will have a twenty-five percent (25%) deviation in premiums or claims from the previous year, the pool shall file with the Commissioner on or before ninety (90) days after the end of the pool's fiscal year a statement as to the pool's financial condition on the last day of the pool's fiscal year, and its business that year, which statement shall be filed in accordance with annual statement instructions established by the Commissioner for workers' compensation insurers required to make such filings in this State.
 - (a) The assets and liabilities shall be computed and allowed in such statement in accordance with the standards applicable to workers' compensation insurers authorized to do business in this State.
 - (b) The financial statement shall include, but not be limited to, an opinion from a qualified actuary as to the adequacy of loss reserves for:
 1. Known claims and expenses associated therewith;
 2. Claims incurred but not reported and expenses associated therewith;
 3. Unearned premiums;
 4. Bad or uncollectible debts, for which reserves shall be shown as liabilities; and
 5. Expenses associated with the run-off or termination of the pool.
 - (c) Such statement shall be subscribed and sworn to by the administrator of the pool and the chairman of the board of trustees.
- (2) Each pool shall submit to the Commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth (6th) month following the end of the pool's fiscal year. Such statement shall also be accompanied by a non-refundable filing fee of five hundred dollars (\$500).

- (a) A pool shall be given thirty (30) additional days in which to file its audited financial statement if the pool notifies the Commissioner in writing at least thirty (30) days prior to the date the audited financial statement is to be filed. The Commissioner may grant such additional extensions as deemed appropriate.
 - (b) Such annual audited financial reports required by this Rule shall adhere to the requirements for financial reports provided in Chapter 0780-1-65. The rules contained in Chapter 0780-1-65 shall apply to all pools in this State, regardless of the amount of the pool's direct premiums written per year or the number of policyholders/members of such pool.
- (3) The financial statements required by this Rule shall be prepared in accordance with the NAIC's Accounting Practices and Procedures Manual in effect for the period covered by the statement.
 - (4) The Commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.
 - (5) Notwithstanding anything in this Chapter to the contrary, failure to file any of the financial statements required by this Rule on a timely basis authorizes the Commissioner to suspend or revoke the certificate of authority of a pool. In lieu of suspending or revoking the pool's certificate of authority, the Commissioner may assess a civil penalty in the amount of one hundred dollars (\$100) per day for each day of delinquency, or in such other amount as allowed by statute.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.10 RATES AND RATE REPORTING.

- (1) Every pool shall adhere to the uniform classification system, uniform experience rating plan, and manual rules of the designated rate service organization. A pool may request permission from the Commissioner to vary from such manual rules. No permission granted by the Commissioner may be relied upon by a pool unless the variance is in writing.
- (2) Every pool shall use the advisory prospective loss cost approved by the Commissioner pursuant to T.C.A. §§50-6-402 and 56-5-306.
- (3) Premium contributions to the pool shall be determined by applying the manual rates and rules of the designated rate service organization.
- (4) Each pool shall file with the Commissioner its loss cost multiplier and supporting information not later than fifteen (15) days after the effective date and at least annually thereafter at least fifteen (15) days prior to the pool's renewal date. Multipliers shall apply to the most recently approved, currently effective advisory prospective loss cost. All multipliers filed pursuant to this Paragraph shall be actuarially justified and shall be certified by a qualified actuary.
- (5) Each pool may be audited by an auditor acceptable to the Commissioner to verify proper classifications, experience rating, payroll and rates in conformance with the standards and rules of the designated rate service organization. A report of the audit shall be filed with the Commissioner in a form acceptable to the Commissioner within sixty (60) days of such audit. All such audits shall be prepared at the expense of the pool.

- (6) Each pool shall provide to its members a method by which a member may appeal the application of the pool's rating system to the member. If the pool fails to grant or reject such request within thirty (30) days of receiving the written appeal, the member may proceed in the same manner as if the application had been rejected. Any party affected by the pool's final decision may, within thirty (30) days of the decision, appeal the decision to the Commissioner.
- (7) If the Commissioner determines that, as a result of an improper application of the pool's rating system or violation of this Chapter, the pool has improperly calculated the premium rates of a member, the Commissioner may order the pool to assess its members or refund premiums collected in order to correct the rate charged the member.

Authority: T.C.A. §§50-6-405(c); 50-6-414.

0780-1-54-.11 PREMIUMS AND RESERVES.

- (1) Each pool shall establish through a qualified actuary a premium payment plan for its members and shall submit such to the Commissioner for his/her approval at least thirty (30) days prior to the beginning of the next fund year. The premium payment plan shall not include installment fees. The Commissioner may, in his/her discretion, disapprove a premium payment plan and require the pool to resubmit a premium payment plan for its members that is acceptable to the Commissioner.
- (2) Each pool shall establish and maintain adequate reserves for:
 - (a) Known claims and expenses associated therewith;
 - (b) Claims incurred but not reported and expenses associated therewith; and
 - (c) Bad or uncollectible debt reserves based on the historical experience of the pool or other pools, if no historical experience is available for the pool.
- (3) In addition to the minimum requirements for reserves set out in this Chapter, the Commissioner may require, after notice and opportunity for hearing, additional amounts so that a pool's reserves shall be reasonable in relation to the pool's outstanding liabilities and premiums and adequate to its financial needs. For purposes of this Rule, in determining whether a pool's reserves are reasonable in relation to the pool's outstanding liabilities and premiums and adequate to its financial needs, the following factors, among others, shall be considered:
 - (a) The size of the pool as measured by its assets, liabilities and surplus, reserves, premiums, and other appropriate criteria;
 - (b) The number and size of members in the pool;
 - (c) The nature and extent of the pool's excess coverage;
 - (d) The quality, diversification and liquidity of the pool's investment portfolio; and
 - (e) The recent past and projected future trend in the size of the pool's investment portfolio.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.12 TAXES AND DELINQUENCIES.

- (1) Each pool shall be subject to pay a tax on monies collected from members in the amount required of insurance companies pursuant to T.C.A. §56-4-206. Such tax shall also include the surcharge imposed on insurance companies pursuant to T.C.A. §56-4-206 to be earmarked for the administration of the Tennessee Occupational Safety and Health Act, T.C.A. §50-3-101, *et seq.* Assessments made by the pool or ordered by the Commissioner shall be taxed as premium pursuant to this Rule.
- (2) Any pool failing and neglecting to make such returns and payments promptly and correctly on or before June 30 of each year shall forfeit and pay to the Commissioner, in addition to the amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part thereof of delinquency; provided, that should the period of delinquency exceed one (1) month, the rate of penalty will be an additional five percent (5%) for the second month or fractional part thereof and penalty thereafter at the rate of one half of one percent (.5%) per month of the amount of tax due, the maximum penalty not to exceed ten thousand dollars (\$10,000) for any company not more than three (3) days delinquent. All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest herein provided for shall apply to any part of the tax unpaid by the due date and no such penalty or interest may be waived.
- (3) The Commissioner has the discretion, for good cause shown, upon application made at least thirty (30) days in advance of delinquency date, to grant an extension of time determined by the Commissioner but not to exceed sixty (60) days to a pool to file the premium tax returns and pay the tax imposed by T.C.A. §56-4-206, without penalty attached, but such tax shall bear interest as herein provided from the date the amount was due.
- (4) Any pool failing to pay the tax due plus penalty and interest for sixty (60) days beyond the due date shall thereafter be barred from transacting any business of insurance in the state until these taxes and penalties are fully paid, and the Commissioner shall revoke the certificate of authority granted to the pool and its administrator to transact business in the state.
- (5) Notwithstanding any other provisions of this Chapter, no grace period for the filing of returns and payments shall be allowed. A premium tax return and payment made to the Commissioner shall not be considered as paid on or before the due date unless:
 - (a) The premium tax return and payment are received by the Commissioner on or before the due date;
 - (b) The premium tax return and payment bears a post office cancellation mark stamped by the United States post office on or before the due date, or are mailed by certified or registered mail, or have a certificate of mailing on or before the due date. A premium tax return and payment received by the Commissioner bearing a metered mail stamp and no post office cancellation mark stamped by the United States post office shall be deemed filed and received on the date such premium tax return arrives at the Commissioner; or
 - (c) In the event a premium tax return and payment are mailed but not received by the Commissioner, or received and the cancellation mark is illegible or omitted, such return and payment shall be deemed filed and received on the date they were mailed, if the sender establishes that the premium tax return and payment were deposited in the United States mail. In order to establish proof of mailing under these circumstances, a record authenticated by the United States post office that the original mailing was sent registered mail, certified mail, or by certificate of mailing, shall be the only proof accepted by the Commissioner.

- (6) A pool may receive a tax credit in accordance with T.C.A. §56-4-210.

Authority: T.C.A. §§50-6-405(c), 56-4-207 and 56-4-210.

0780-1-54-.13 INVESTMENTS.

- (1) Each pool shall maintain an amount equal to at least eighty-five percent (85%) of its net admitted assets on a statutory basis in the following:
- (a) Cash and cash equivalents;
 - (b) The fully insured portion of a bank deposit when the insurance is provided by a solvent agency of the United States government or by collateral;
 - (c) A certificate of deposit issued by a bank or other financial institution whose deposits qualify for Federal Deposit Insurance Corporation protection; provided, if the Commissioner determines that the amount of the certificate of deposit purchased by an insurer in any one bank is not a sound investment, the Commissioner may require the insurer to liquidate that portion found to be an unsound investment;
 - (d) A share of savings account of a savings and loan or building and loan association, to the extent that an account is insured by the Federal Deposit Insurance Corporation; or
 - (e) A rated credit instrument that is issued, assumed, guaranteed, or insured by the United States or Canada or by a government-sponsored enterprise of the United States or Canada if the instrument is assumed, guaranteed, or insured by the United States or Canada or is otherwise backed or supported by the full faith and credit of the United States or Canada.
- (2) Notwithstanding any other provision in this Chapter, funds not needed for current obligations may be invested by the board of trustees in "Tennessee securities" as defined in T.C.A. §56-4-210(b).
- (3) Investment in real estate by a pool may only be undertaken with the prior approval of the Commissioner.
- (4) Each pool shall maintain its investments and deposits pursuant to Chapter 0780-1-46.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.14 INFORMATION TO MEMBERS.

The articles of incorporation, trust agreement or bylaws of each pool shall state what each member's rights are with respect to receiving financial information related to the pool. Notwithstanding anything contained in the organizational documents of the pool, each pool shall, within thirty (30) days of receiving a written request and upon payment of a reasonable charge, furnish to any member or former member affected by a rate used by the pool all pertinent information as to such rate, including but not limited to loss run data concerning the member. Each pool shall annually send to each of its members a copy of all information relative to the member's experience modification factor.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.15 REFUNDS AND DIVIDENDS.

- (1) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than eighteen (18) months after the end of the fund year, after written approval is granted to the pool by the Commissioner to disburse such refund(s).
- (2) If a refund is declared by a pool and such refund is approved to be disbursed by the Commissioner, ten percent (10%) of the refundable amount must be retained by the fund or pool for an additional year to cover any liabilities that may develop as a result of incurred but not reported losses for that period.
- (3) Each member shall be given a written description of the refund policy of the pool at the time of application for membership. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the pool after that fund year. Each such refund policy shall be filed and approved by the Commissioner prior to the policy's effective date.
- (4) Before any dividend or refund may be paid, the pool must receive the written approval of the Commissioner.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.16 SPONSORING ASSOCIATIONS.

- (1) Each pool shall annually file with the Commissioner a certified copy of the board minutes of its sponsoring association evidencing that the sponsoring association's board of directors has reviewed the actions of the pool and that the pool is complying with the sponsoring association's constitution, by-laws, and procedures and applicable state statutes and regulations.
- (2) A sponsoring association may require a pool to pay to the sponsoring association a royalty fee or fee for using its name or other services which may be provided by the sponsoring association to the pool. All fees paid to the sponsoring association shall be approved by the Commissioner no later than thirty (30) days prior to the execution of any contract setting such fees between the pool and the sponsoring association.
- (3) This Chapter supercedes any conflict between the requirements and procedures set forth in this Chapter and the constitution, by-laws and procedures of a sponsoring association.
- (4) A sponsoring association may not direct a pool as to who it should appoint as either a member of the pool's board of trustees, the administrator or the third party administrator of the pool. Notwithstanding the foregoing, a sponsoring association may require the pool to elect the president of the sponsoring association as a member of the board of trustees, and may require the board of trustees to elect its non-member board of trustee members from a group of not less than five (5) individuals selected by the sponsoring association's board of directors.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.17 INSURANCE PRODUCER LICENSE REQUIRED.

Any person soliciting membership in a pool must be appropriately licensed as an insurance producer authorized to sell property and casualty lines of insurance. Any person selling, soliciting or negotiating membership in a pool shall be subject to all the statutory provisions, prohibitions and requirements contained in Tenn. Code Ann. Title 56, Chapter 6, Part 1.

Authority: T.C.A. §§50-6-405(c); 56-6-101-126.

0780-1-54-.18 MISREPRESENTATION PROHIBITED.

No person shall make a material misrepresentation, omit to state a material fact, including the joint and several nature of the pool, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offering of workers' compensation coverage by a pool to members of a trade or professional association. Notwithstanding the forgoing, a misrepresentation shall not provide a member grounds for avoiding its liabilities and obligations to the pool if that member's workers' compensation liabilities have been paid or incurred by the pool.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.19 SERVICE OF PROCESS.

Each pool and member thereof that has operated or is operating in this State shall be deemed through acceptance of its certificate of authority to have appointed the Commissioner as its attorney-in-fact to receive service of legal process issued against it in this State with respect to any matters arising out of the actions of or related to the pool. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the pool.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.20 EXAMINATIONS AND INVESTIGATIONS.

- (1) The Commissioner has the authority to examine the affairs of any pool that has applied for or received a certificate of authority under this Chapter in order to determine the financial condition of the pool or to determine whether the pool is in compliance with all insurance laws and regulations applicable to it. Such examinations shall be conducted when deemed necessary but no less than once every five (5) years, and all expenses of such examinations shall be assessed against the pool, including the costs of contract examiners or specialists.
- (2) The Commissioner has the authority to investigate the affairs of any person acting as a pool or any person associated or affiliated with a pool that offers or proposes to offer workers' compensation insurance in this State in order to determine whether such person is in violation of the Tennessee Insurance Law or this Chapter.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.21 CEASE AND DESIST ORDERS.

- (1) Except as otherwise provided in Paragraph (2) of this Rule, after notice and opportunity for a hearing, the Commissioner may issue an order requiring a pool to cease and desist from engaging in any act or practice found to be in violation of any applicable statute or provision under the Tennessee Insurance Law, this Chapter, or any order of the Commissioner.
- (2) Whenever the Commissioner determines that a pool has been established or maintained in this State in violation of Rule 0780-1-54-.03, the Commissioner may issue a cease and desist order *ex parte* and without

prior notice being given to the pool; provided, however, that the Commissioner shall provide the pool notice and the opportunity for hearing to challenge the issuance of the cease and desist order.

- (3) Any order issued pursuant to this Rule will be accompanied by a notice to the pool as to the right to have a hearing. All hearings conducted pursuant to this Chapter will be done in accordance with the Uniform Administrative Procedures Act, T.C.A. §§4-5-301, *et seq.*
- (4) Without limitation on other remedies provided by law, upon finding that any person or pool has violated any final cease and desist order issued by the Commissioner, the Commissioner may seek enforcement of such order, through the Attorney General and Reporter, in the Chancery Court of Davidson County.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.22 SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY.

- (1) After notice and an opportunity for a hearing, the Commissioner may revoke or suspend the certificate of authority or a license issued under this Chapter upon a finding that any of the following exists:
 - (a) The pool is in a hazardous financial condition. The Commissioner, in evaluating the financial or operational condition of a pool, may utilize the criteria for evaluating the financial or operation condition of a pool contained in Chapter 0780-1-66. The Commissioner may consider such other factors in evaluating the financial condition of a pool as he/she may deem appropriate;
 - (b) The pool has failed to pay any premium tax, regulatory penalty or assessment imposed upon the pool at the time when such obligations are owed;
 - (c) The pool has failed to cooperate in any examination or investigation initiated by the Commissioner pursuant to Rule 0780-1-54-.20;
 - (d) The pool, the pool's administrator, or an officer or director thereof, or any member of the pool's board of trustees has failed to comply with any of the provisions of this Chapter or with any lawful order of the Commissioner, including those issued pursuant to Rules 0780-1-54-.21 and 0780-1-54-.24, within the time prescribed;
 - (e) The pool, the pool's administrator, or an officer or director thereof, or any member of the pool's board of trustees has provided incorrect, misleading, or incomplete and materially untrue information to the Commissioner;
 - (f) The pool's administrator, or an officer or director thereof, or any member of the pool's board of trustees has been convicted of a felony and the pool has failed to remove the administrator or board member;
 - (g) The pool has committed an insurance unfair trade practice or fraud, as defined in T.C.A. §56-8-104;
 - (h) The administrator is not sufficiently qualified or has not employed persons sufficiently qualified to administer a pool;
 - (i) The pool fraudulently obtained its certificate of authority;

- (j) The pool made a misrepresentation in the application for the certificate of authority;
 - (k) The pool, the pool's administrator or any member of the pool's board of trustees has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise in its fiduciary capacities; or
 - (l) The pool uses a third party administrator that is not licensed by the Commissioner.
- (2) With respect to any pool licensed or required to be licensed under this Chapter, and in addition to or in lieu of any action taken in Rule 0780-1-54-.21 or Paragraph (1) of this Rule, the Commissioner may assess a civil penalty against such pool in an amount not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each separate violation of a statute or rule applicable to the pool. Each day of continued violation constitutes a separate violation for purposes of computing such penalty.
 - (3) The Commissioner may serve a notice or order in any action arising under this part by registered or certified mail to the pool's administrator and/or board of trustees at the address of record in the files of the Commissioner. Notwithstanding any provisions of law to the contrary, service in the manner set forth herein shall be deemed to constitute actual service on such pool or applicant.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.23 TERMINATION OF CERTIFICATE OF AUTHORITY.

- (1) A pool wishing to terminate its certificate of authority and cease operations shall file a notice of intent to terminate with the Commissioner and its members no later than ninety (90) days prior to the proposed termination date. A pool shall accompany this notice with a detailed description of its plan as to how it will meet all its outstanding workers' compensation obligations and liabilities.
- (2) The Commissioner shall not grant the request of any pool to terminate its certificate of authority until such time as it has demonstrated to the Commissioner that it has made satisfactory plans to meet all outstanding workers' compensation obligations and liabilities. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith.

Authority: T.C.A. §50-6-405(c).

0780-1-54-.24 ASSESSMENTS.

- (1) If the assets of a pool are at any time insufficient to enable the pool to discharge its legal liabilities and other obligations and to maintain the surplus and reserves required of it under this Chapter, it shall, within thirty (30) days of receiving notice of such deficiency, levy an assessment upon its members for the amount needed to eliminate the deficiency.
 - (a) In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from:
 - 1. Surplus funds obtained by the pool from a previous fund year, with the prior written approval of the Commissioner;

2. Administrative funds;
 3. Assessment of the membership, if ordered by the pool; or
 4. Such alternative method as the Commissioner may approve or direct.
- (b) Any deficiency expected for any fund year shall be reported, accompanied by supporting financial documentation, to the Commissioner within three (3) working days of the pool receiving notice of the deficiency.
- (2) If the pool fails to assess its members or to otherwise make up such deficiency within thirty (30) days of notice of such deficiency, or such other time as may be allowed by the Commissioner, the Commissioner shall issue an order to the pool and the pool's members specifying the time period in which the pool must assess its members, the procedures for implementing the assessment, and the time in which the members have to pay the assessment.
 - (3) Any pool or member affected by an order of assessment issued by the Commissioner may request, in writing, a hearing before the Commissioner as to the necessity or grounds for such order. Any request for such a hearing must be filed no later than thirty (30) days after the entry of the Commissioner's order.
 - (4) A pool that has a deficiency in a fund year may be considered to be in a hazardous financial condition for purposes of this Chapter, the Insurers Rehabilitation and Liquidation Act, T.C.A. §§56-9-101, *et seq.*, or any other regulatory purpose or any of the remedies provided by this Chapter.
 - (5) A pool that fails to comply with an order of the Commissioner issued under this Rule shall be considered to be insolvent for purposes of this Chapter, the Insurers Rehabilitation and Liquidation Act, T.C.A. §§56-9-101, *et seq.*, or any other regulatory purpose.
 - (6) In the event of a supervision, liquidation, or rehabilitation of a pool, the Commissioner shall levy an assessment upon such members of the pool for such an amount as the Commissioner determines to be necessary to discharge all liabilities of the pool, including the reasonable costs of the supervision, liquidation, or rehabilitation.

Authority: T.C.A. §§50-6-405(c) and 56-9-101, *et seq.*

0780-1-54-.25 APPLICABILITY OF THE INSURERS REHABILITATION AND LIQUIDATION ACT.

The proceedings authorized by Title 56, Chapter 9 are applicable to pools. A pool established or maintained in this State is considered by its nature included in the definition of the term "insurer" found in T.C.A. §56-9-103(12) for all such purposes.

Authority: T.C.A. §§50-6-405(c) and 56-9-101, *et seq.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2004.
(10-49)

**DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF INSURANCE**

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to T.C.A. §56-5-314(c). 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 Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. CST on the 17th day of December, 2004.

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

For a copy of this notice of rulemaking hearing, contact: John F. Morris or Tracey Gentry Harney, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-79
ADOPTION OF THE TENNESSEE ASSIGNED RISK PLAN**

NEW RULES

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0780-1-79-.01 AUTHORITY AND PURPOSE.

Provide reasonable rules pursuant to T.C.A. §56-5-314(c) to establish the Tennessee Workers' Compensation Insurance Plan and govern the equitable distribution of risks by direct assignment, reinsurance, or otherwise, and their assignment to insurers, and provide a method whereby applicants for insurance, insureds, and insurers may have a hearing on grievances and the right of appeal to the Commissioner.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.02 DEFINITIONS.

- (1) “Administrator” means the organization selected through a competitive bid process by the Commissioner as the administrator for the Plan.
- (2) “ALDA” means the Adverse Loss Development Account maintained by the Administrator for payment of claims made under the Plan.
- (3) “Allocated Loss Adjustment Expense” or “ALAE” means those expenses directly associated with a particular claim, including those expenses incurred by a servicing carrier, the Administrator, the reinsurance administrator, or the Plan in the investigation, negotiation, and settlement of claims, suits or legal proceedings directly associated with declaratory judgment action on a particular claim, which include, but are not limited to the following: expert witness fees, legal fees that are directly allocable to a workers’ compensation claim, legal expenses incurred in the pursuit of subrogation, private investigator fees allocable to a particular claim, expert witness fees in the defense of a claim, costs for birth and death certificates directly allocable to a claim, fees for hospital medical records and copy services directly allocable to a claim, appeal bond costs and filing fees directly allocable to a claim, costs of securing medical or legal documents to determine liability, fees for a medical examination of a claimant to determine the apportionment of liability, causal relationship, maximum medical improvement (by a non-treating physician), and permanent partial disability rating allocable directly to a particular claim, legal and other expenses incurred in the pursuit of collections of unpaid premiums, and arbitration fees in connection with a particular claim.
 - (a) ALAE also includes any interest on any judgment or award, prejudgment interest or delayed damages, except prejudgment interest or delayed damages which are considered to be part of loss: (1) by the terms and conditions of the policy reimbursed, insured, or reinsured hereunder, or (2) by law or regulation of the governmental body having jurisdiction.
- (4) “Client-relations consultant” means an employee of the Administrator that attempts to mediate the dispute resolution process and serves as a liaison to all parties.
- (5) “Collected premium” means premiums for workers’ compensation insurance actually received by the servicing carrier(s), the Plan, and/or the Administrator which are determined by the authorized base rates, any experience modification, any applicable schedule rating modification, surcharge programs, loss constants, minimum premiums, and the expense constant, net of any return premiums.
- (6) “Commissioner” means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (7) “Deficit” means the determination by the Administrator that the amount of losses, allocated loss adjustment expenses, servicing carrier fees, administrative fees, taxes, assessments, and all other Plan expenses paid, including, but not limited to premium collection expenses, exceeds the amount of collected premium, including any investment income, for the policies issued during each plan period, except that all premiums and losses resulting from those employers insured by direct assignment carriers shall be excluded. Deficits shall be reported to the Department on an as incurred basis.
- (8) “Department” means the Department of Commerce and Insurance for the State of Tennessee.
- (9) “Designated rate service organization” means the entity designated by the Commissioner pursuant to T.C.A. §56-5-320.
- (10) “Direct assignment carrier” means an insurer licensed to write workers’ compensation insurance in Tennessee that has chosen the option under this Chapter and has been approved by the Commissioner to accept its pro rata share of risks directly, rather than participating in the Plan or Reinsurance Mechanism.

Direct assignment carriers do not participate in a deficit assessment or surplus distribution, however, they must accept their pro rata share of the plan administration expenses and reimburse the Tennessee Workers' Compensation Insurance Assigned Risk Plan accordingly.

- (11) "Employer" means any going financial concern, person or business entity, whether for-profit or not-for-profit, that elects to or is required by law to purchase workers' compensation insurance to cover its statutory obligation to its employees. Entities that are affiliated or have common ownership are considered to be a single employer for purposes of this Chapter.
- (12) "Insurance producer" shall have the same meaning as defined in T.C.A. §56-6-102.
- (13) "Investment income" means money earned from invested assets. Investment income may also include realized capital gains, or be reduced by capital losses, over the same period.
- (14) "Loss or losses" means payments that the servicing carrier(s) are required to pay out under the terms and conditions of the policies issued by the servicing carrier(s) to eligible insured on behalf of the Plan. Loss or losses shall also include an event where a servicing carrier or the Administrator is made or threatened to be made a party to any action, suit or proceeding, because either was a servicing carrier and/or the Administrator pursuant to and acting in accordance with these rules, said servicing carrier and/or Administrator shall be indemnified by the Plan against all judgments, fines, amounts paid in settlement, reasonable costs and expenses, including attorneys' fees, and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which the servicing carrier and/or the Administrator shall be adjudged in such action, suit or proceeding to be liable by reason of willful misconduct or gross negligence in the performance of its duties or obligations as a servicing carrier or Administrator for the Plan. Such indemnification shall not be exclusive of other rights the Administrator and/or servicing carrier may have, and shall pass to the successors, heirs, executors or administrators of the servicing carrier and/or Administrator. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such person or insurer was liable by reason of willful misconduct or gross negligence.
- (15) "Non-public personal information" has the same meaning as set forth in Rule 0780-1-72-.04(22).
- (16) "Participating insurance carrier" means any insurance carrier, other than those designated by the Commissioner as a direct assignment carrier, licensed to transact workers' compensation insurance business in the State of Tennessee, and who shall also serve as a reinsurer under the Reinsurance Mechanism.
- (17) "Plan" means the Tennessee Workers' Compensation Insurance Assigned Risk Plan, which is the residual market plan in effect in the state of Tennessee created by the Commissioner pursuant to T.C.A. §56-5-314.
- (18) "Plan period" means each one (1) year policy period of the Plan and the mechanism, beginning with the effective date of the Plan and the Reinsurance Mechanism which shall include all policies issued on behalf of the Plan that incept during each one (1) year policy period as indicated above. In the event that the Tennessee Workers' Compensation Insurance Assigned Risk Plan and/or the Reinsurance Mechanism are terminated prior to the anniversary of any plan period, then such final plan period shall be for a period of less than one year ending on such date of termination.
- (19) "Policy year" means the amount of time duration between the inception of the first policy written in a one (1) year plan period and the expiration of the last policy written in the same one (1) year plan period.
- (20) "Reinsurance administration expense(s)" means the reasonable expenses and associated fees required for the administration of the Reinsurance Mechanism by the reinsurance administrator. The expenses for

administering any assessment under the mechanism shall be reasonable in comparison to the amount of excess reinsurance losses assessed and are subject to review by the Commissioner as to such reasonableness, such expenses are considered to be pool administration expenses.

- (21) “Reinsurance Mechanism” means the Tennessee Aggregate Excess of Loss Reinsurance Mechanism, as outlined in Rule 0780-1-79-.15.
- (22) “Reinsurer(s)” shall have the same meaning as participating insurance carrier(s), as defined herein.
- (23) “Servicing carrier” means a licensed insurer that has been selected by the Administrator and the Department through a competitive bid process to provide workers’ compensation insurance to employers that are in good faith entitled to such insurance, on an assigned basis.
- (24) “Servicing carrier agreement” means the formal written agreement between the Administrator, acting on behalf of the Plan, and each individual servicing carrier regarding the duties and obligations of each party as they relate to each other under the plan document.
- (25) “Servicing carrier fee(s)” means those fees, based as a percentage of collected premium, that are paid to insurance carriers that have been selected as servicing carriers for the Plan.
- (26) “Surplus” means whenever the amount of losses incurred, allocated loss adjustment expense, servicing carrier fees, taxes, assessments, incurred but not reported claims, administrative fees and all other Plan expenses, including, but not limited to premium collection expenses paid, are less than the amount of collected premium (plus investment income on collected premiums), for the policies issued during each plan period. This calculation shall combine the results of all servicing carriers contracting with the assigned risk plan, and shall exclude any premiums or losses incurred by direct assignment carriers.
- (27) “UAPA” means the Uniform Administrative Procedures Act, as amended, at T.C.A. §§4-5-101, *et seq.*
- (28) “Voluntary workers’ compensation premium” means the direct written premiums for workers’ compensation insurance on accounts that an insurance company writes in the voluntary or regular market in the State of Tennessee.
- (29) “Workers’ compensation insurance” means insurance including employer’s liability insurance, that provides coverage for an employer’s obligations as enumerated in the state Workers Compensation Law, including, but not limited to, the U.S. Longshore and Harbor Workers’ Compensation Act (as amended), the Jones Act (as amended), and the Federal Coal Mine Health and Safety Act of 1969 (as amended); any other such coverage as determined by law or judicial ruling; and any other such coverages and/or endorsements as determined by the Administrator and approved by the Commissioner, including, but not limited to the following, if requested by the insured employer or their designated insurance producer:
 - (a) Employers liability increased limits up to a maximum limit of:
 1. Bodily Injury by Accident — \$1,000,000 - each accident.
 2. Bodily Injury by Disease — \$1,000,000 - policy limit.
 3. Bodily Injury by Disease — \$1,000,000 - each employee.
 - (b) Coverage under the following Acts shall be applicable, provided that United States Longshore and Harbor Workers Compensation Act coverage is present on the policy:

1. Outer Continental Shelf Lands Act;
 2. Defense Base Act;
 3. Nonappropriated Fund Instrumentalities Act
- (c) Coverage for Maritime (Admiralty), Program I or Program II, at the standard limit per accident of \$25,000, written as on adjunct to state workers compensation act coverage.
- (d) The endorsement Waiver of Our Right to Recover From Others (WC 00 03 13) is available if required of the employer by contract.
- (e) Coverage for an “alternate employer” if required of the employer by contract and only when the state of operations of the “alternate employer” is listed in 3.A. of the policy. The Alternate Employer Endorsement (WC 00 03 01 A) shall be utilized to provide this coverage.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.03 APPLICABILITY.

These rules shall apply to all policies issued or in effect through the Plan. Any future modifications of these rules shall not lessen the performance standards required of the Administrator, or the servicing carrier(s) or direct assignment carrier(s) during the period of the state contract or the terms of the Reinsurance Mechanism applicable to the Plan, except where mutually agreed to by all parties. The Commissioner may dissolve the Plan at any time, but such dissolution shall not affect the rights and/or liabilities of any party accrued prior to dissolution, including but not limited to, the notice and/or penalty provisions of the state contract of the Administrator.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.04 SELECTION OF THE ADMINISTRATOR.

- (1) The Administrator, under the supervision of the Commissioner, shall exercise its duties as outlined in this Chapter and as described in its contract with the State.
- (2) Servicing carriers shall be selected through a competitive bid process conducted by the Administrator and in accordance with applicable state regulations. All workers’ compensation insurance policies issued by the servicing carriers or direct assignment carriers shall be for one (1) year periods, unless rewritten to a short term policy for lapsed coverage or otherwise approved by the Commissioner, to eligible employers seeking such coverage under the Plan and this Chapter..
- (3) The Administrator may enter into any contracts with the servicing carriers that are necessary to implement the Plan. All servicing carriers shall cede one hundred percent (100%) of all collected premium, less their servicing carrier fee, and one hundred percent (100%) of all losses, including ALAE, and premium collection expenses to the Plan as prescribed in this Chapter.
- (4) In the event that a deficit occurs for any Plan period, all participating insurance carriers writing workers’ compensation insurance in Tennessee are required to reimburse the Plan pursuant to T.C.A. §56-5-314, and in accordance with this Chapter.

Authority: T.C.A. §56-5-314.

0780-1-79-.05 RULES FOR ELIGIBILITY.

- (1) The following rules govern the eligibility of applicants to the Plan:
 - (a) Employers are eligible for coverage in Plan, provided that they are making application without fraud or misrepresentation, either by inclusion or omission of information, and are otherwise acting in good faith to meet their legal obligation of securing workers' compensation insurance. The Administrator and/or the servicing carrier and/or the direct assignment carrier will assume that the employer is acting without fraud or misrepresentation, unless evidence can be produced that would demonstrate otherwise.
 - (b) An employer shall be determined not to be acting in good faith, and therefore not eligible for coverage in the Plan, when any of the following conditions are existent at the time application to the plan is made or thereafter, or the existence of such other conditions not enumerated herein would indicate that the employer is not acting in good faith:
 1. An applicant who is or was a state or federally approved self-insured employer having sufficient knowledge, at the time of application, of conditions that are likely to increase the number of occupational disease or cumulative trauma injury claims filed under a Plan policy which originated from exposures while being a self-insured employer, may not be considered eligible for coverage. Such conditions may include, but are not limited to, pending bankruptcy proceedings, cessation of operations, insolvency or any event (or series of events) that would result in the dismissal of more than seventy-five percent (75%) of all employees within the first one hundred and eighty (180) days following the policy effective date;
 2. The applicant has an outstanding obligation for workers' compensation insurance premiums on a workers' compensation insurance plan, including those premiums owed as a result of a premium audit, about which there is no formal written dispute;
 3. The employer ignores or refuses to implement written safety and health recommendations, reasonably prescribed by a servicing carrier or direct assignment carrier, that are designed to remove an imminent threat of serious bodily harm; or
 4. When making application to the Plan, the employer, or its representative and/or the insurance producer, having sufficient knowledge to the contrary beforehand, made a material misrepresentation by omission or otherwise. Material misrepresentations shall include, but are not limited to the following:
 - (i) Estimated annual premium;
 - (ii) Offers of workers' compensation insurance in the voluntary market at a competitive price;
 - (iii) Nature of business;
 - (iv) Name or ownership of business;
 - (v) Estimated payroll;

- (vi) Outstanding premium obligations;
 - (vii) Previous insurance history; or
 - (viii) Such other information deemed necessary for proper underwriting and/or policy issuance by the Administrator.
- (c) An employer, within sixty (60) days prior to making application to the Plan, must have been rejected for workers' compensation insurance by two (2) non-affiliated insurers licensed to write workers' compensation insurance in the State of Tennessee.
- (2) Any employer insured by the Plan will automatically receive a renewal quotation from their designated Plan servicing carrier or direct assignment carrier, unless otherwise instructed by the Commissioner. Any employer insured under the Plan shall receive at least the same quality of service as is available to those similarly situated employers who are voluntarily insured. This includes, but is not limited to, safety engineering, loss control, claims handling, employee classification and reserving practices. Any dispute arising hereunder shall be subject to the grievance and appeals procedures specified herein.
- (a) Notwithstanding the automatic renewal provision, any employer that has been a member of the Plan for three (3) or more years must be denied by voluntary market coverage from two (2) non-affiliated insurance carriers licensed to write workers' compensation in this State before being renewed by the Plan.
- (3) An employer deemed to be ineligible for coverage in the Plan will be canceled by the servicing carrier or direct assignment carrier utilizing all required state notice requirements
- (4) Subject to this Chapter, the servicing carriers and direct assignment carriers for the Plan are responsible for losses incurred by their insured employers after the effective date of coverage under the Plan.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.06 APPLICATION PROCESS.

- (1) An employer applying for coverage under the Plan shall submit a Plan application for insurance and to the Administrator in a manner set forth by the Administrator.
- (2) The Administrator has the authority, subject to these rules and the prior approval of the Commissioner, to establish specific rules and procedures governing this application process.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.07 BINDING COVERAGE AND MISCELLANEOUS RULES.

Coverage is bound under the Plan, consistent with this Chapter and in accordance with the following procedures:

- (1) The insurance producer and/or the employer is responsible for forwarding the completed application form to the Administrator with a check payable to the Plan for the estimated annual or deposit premium as computed by the insurance producer, or as determined by contacting the Administrator prior to submission

- of the application, or by any other electronic means as becomes available and is approved by the Commissioner. The application shall be on a form approved by the Commissioner and, at a minimum, shall include the employer's latest filed federal employer 941, 941E, 942 or 943 form or equivalent federal or state verifiable current payroll record, e.g. unemployment wage report; and
- (2) The Administrator may allow filing of an application by facsimile transmission or other electronic medium, provided there is receipt of the originally signed application and deposit premium received within five (5) business days of when the facsimile is received by the Administrator.
 - (3)
 - (a) For all employers, other than those that are self-insured pursuant to T.C.A. §50-6-405, immediately preceding application to the Plan, coverage will be bound at 12:01 a.m. on the first day following the postmark time and date on the envelope in which the application, including the estimated annual or deposit premium, is mailed, or the expiration of existing coverage, whichever is later, unless a later date is requested. If there should be no postmark or if the postmark is not discernible, coverage will be effective 12:01 a.m. of the date of receipt by the Administrator unless a later date is requested. Those applications hand delivered or delivered *via* other authorized means to the Administrator will be effective as of 12:01 a.m. the date following receipt unless a later date is requested; or
 - (b) For those employers which are self-insured pursuant to T.C.A. §50-6-405, immediately prior to obtaining coverage through the Plan, coverage will be bound at 12:01 a.m. following the postmark time and date on the envelope in which the application, including the estimated annual or deposit premium is mailed, or the expiration of existing coverage, whichever is later, unless a later date is requested. If there should be no postmark, or if the postmark date is not discernible, coverage will be effective 12:01 a.m. following the date of receipt by the Administrator, unless a later date is requested. Those applications hand delivered to the Administrator will be effective 12:01 a.m. following the date of receipt, unless a later date is requested.
 - (4) When an eligible employer has completed a Plan application and the application and premium due have been sent as prescribed in Paragraph (1) of this Rule, the Administrator shall bind coverage, and the assigned servicing carrier or direct assignment carrier shall issue said binder and/or policy, and provide copies to the insurance producer, and the insured. The servicing carrier or direct assignment carrier shall, in accordance with any state guidelines, notify any appropriate state agency, including but not limited to the Tennessee Department of Labor and Workforce Development, regarding the implementation of insurance coverage.
 - (5) No policies shall be issued under the Plan to an employer that has not met all of its workers' compensation insurance premium obligations. The Commissioner may waive this prohibition if the Commissioner is satisfied that a non-frivolous and formal legal dispute regarding such premium obligations has been appropriately filed and is pending. If, subsequent to policy issuance, an insured employer does not meet all of its workers' compensation insurance premium obligations under a previous policy or under a present policy, the servicing carrier or the direct assignment carrier may cancel a policy currently in force under the Plan, giving appropriate notice of cancellation.
 - (6) A policy issued under the Plan shall be issued for a term of one (1) year, unless a continuous policy that utilizes renewal certificates is approved by the Commissioner. A policy for a term other than one (1) year must first be approved by the Commissioner unless the policy is rewritten to a short term policy due to a lapse in coverage. A copy of the policy declarations and all endorsements, and/or renewal certificate (if approved) properly stamped to indicate that it is a Plan policy, will be retained by the servicing carrier(s) or direct assignment carrier(s).
 - (7) In addition to any other grounds allowed by law for the cancellation of workers' compensation policies, the Plan policy may be canceled at any time if it is discovered by the servicing carrier, direct assignment carrier or Administrator that the employer:

- (a) Did not act in good faith in applying for coverage under the Plan;
 - (b) Disregarded any or all written health and safety recommendations of the insurer or Administrator regarding the imminent threat of serious bodily harm; or
 - (c) Violated the terms and conditions of the Plan policy or this Chapter.
- (8) Prior to canceling a policy, the servicing carrier or direct assignment carrier shall attempt to resolve the issue that provides grounds for the policy's cancellation with the employer within thirty (30) days. Failing resolution of any issue(s) between the servicing carrier, direct assignment carrier and the employer regarding the policy's cancellation, the Administrator shall be given notice prior to actual issuance of such notice of cancellation to the insured.
- (a) Approval of the Administrator shall not be required for cancellation for non-payment of premium unless the servicing carrier or direct assignment carrier, or insured employer has invoked the dispute resolution procedures contained herein.
 - (b) Any employer whose coverage under the Plan is canceled in this manner must complete a new application and demonstrate its good faith entitlement to such insurance before assignment or reinstatement is effected. An employer may only be reinstated once with a lapse of coverage and must thereafter submit a new application to obtain workers' compensation coverage through the Plan.
- (9) The classification codes, rates, rating data, and forms utilized in the policies issued by the Plan's servicing carrier(s) and direct assignment carriers must be approved by the Commissioner.
- (10) A quotation for renewal or a notice of non-renewal due to the employer being a member of the Plan for three (3) or more years, shall be forwarded to the employer and the insurance producer of record for such employer, if any, at least sixty (60) days prior to the expiration date of the policy if the employer is in good standing with the servicing carrier or direct assignment carrier. The quotation shall include notice of impending expiration of coverage to the employer. An employer that is not being automatically renewed due to the employer being a member of the Plan for three (3) or more years must submit the denial of voluntary market coverage by two (2) non-affiliated insurance carriers licensed to write workers' compensation in this State along with the employer's premium as set forth below to maintain their coverage through the Plan. The following dates of postmark or receipt by the servicing carrier or direct assignment carrier shall apply to all renewals of policies under the Plan:
- (a) If the required deposit premium is postmarked or received by the servicing carrier or direct assignment carrier within five (5) calendar days after the expiration date of the policy, the policy shall be renewed with all appropriate documents being retained by the servicing carrier or direct assignment carrier in accordance with this Chapter.
 - (b) If the required deposit premium is postmarked or received by the servicing carrier or direct assignment carrier more than five (5) calendar days after the expiration date of the policy and up to and including sixty (60) days from the expiration date of the policy, the policy shall be renewed with a lapse in coverage with an effective date of the postmark date or received date with all appropriate documents being retained by the servicing carrier or direct assignment carrier in accordance with plan document rules.
 - (c) If the required deposit premium is postmarked or received by the servicing carrier after sixty (60) days from the expiration date of the prior policy, the policy shall not be renewed. The employer must submit a new application to the Plan for coverage.

- (11) Any otherwise eligible employer who agrees to have its workers' compensation insurance provided by an insurer on a voluntary basis, and not through the Plan, may elect to do so at any time. The servicing carrier or direct assignment carrier for such employer shall cancel coverage, upon receipt of proof of coverage or proof of there no longer being a need for coverage, on a pro rata basis, as of the effective date of the issuance of the voluntary market insurance.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.08 OBLIGATIONS OF INSURANCE PRODUCERS.

- (1) An employer may designate a licensed insurance producer to act on its behalf in receiving and transmitting information from the servicing carrier, the direct assignment carrier, and/or Administrator. An employer may change the designated insurance producer at any time by providing notice to the servicing carrier, or the direct assignment carrier and/or Administrator. Any request for insurance producer reassignment received after the effective date of the policy will become effective as of the date of the renewal policy for purposes of paying a commission.
- (2) The insurance producer commission shall be paid at a flat rate of five percent (5%) of collected premium, net of any return premiums, except that the commissions for coverage placed in other states shall be subject to the commission structure approved for the residual market in those other states, if any, or as otherwise approved by the Commissioner.
- (3) Insurance producers who attempt to place coverage through the Plan for an employer are required to follow all provisions of this Chapter in placing such coverage, including, but not limited to verifying that the employer has been rejected for workers' compensation insurance by two (2) non-affiliated insurers licensed to write workers' compensation insurance in the State of Tennessee.
- (4) Failure of an insurance producer to meet any of the provisions of these rules in placing or renewing coverage through the Plan for an employer shall be considered a violation of T.C.A. §56-6-112(a) for purposes of the imposition of any disciplinary action, civil penalty or period of probation, suspension or revocation of a license against such insurance producer by the Commissioner.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.09 OBLIGATIONS OF SERVICING CARRIERS.

- (1) Each servicing carrier shall make available its own staff, office space, facilities and equipment as are necessary for the performance of its obligations under this Chapter, as well as its servicing carrier agreement. Each servicing carrier shall perform its services, exercise its powers, and perform all of its duties in accordance with the terms of this Chapter, its servicing carrier agreement, and such performance standards as may be contained therein and amended from time to time by mutual agreement between the servicing carrier, the Administrator and the Commissioner.
- (2) Each servicing carrier shall process, adjust, settle, compromise, defend, litigate and pay claims arising out of the workers' compensation insurance policies issued on behalf of the Plan. Each servicing carrier shall establish and maintain such claim reserves as deemed reasonable and proper by the Commissioner and the Administrator. Each servicing carrier shall also maintain complete, orderly and accurate claim files, records and accounts in accordance with the most current volume of the Accounting Practices and Procedures Manual published by the National Association of Insurance Commissioners.

- (3) Each servicing carrier shall comply with the financial reporting requirements and procedures established from time to time by the Commissioner and/or the Administrator.
- (4) Each servicing carrier shall report to the Administrator, any change in its ability to perform its obligations as a servicing carrier hereunder, as soon as possible and, in any event, no later than ten (10) calendar days after being aware of such change.
- (5) All loss settlements made by a servicing carrier, whether under strict contract conditions or by way of compromise, shall be binding unconditionally upon the Plan. The servicing carrier shall have the sole discretion to make all decisions relating to its claim-handling authority, including decisions of whether to pursue salvage or subrogation.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.10 PARTICIPATION MANDATORY FOR WORKERS' COMPENSATION INSURERS.

- (1) All insurers licensed to write workers' compensation insurance in Tennessee shall participate in the Plan. An insurer may satisfy such requirement to participate in the Plan by electing to act as either of the following:
 - (a) A participating insurance carrier in the Reinsurance Mechanism; or
 - (b) A direct assignment carrier, provided that such election be approved by the Commissioner after being provided notice by the insurance carrier of not less than ninety (90) days prior to the beginning of the calendar year during which such carrier makes its election or as otherwise prescribed by the Commissioner.
- (2) An insurance carrier's election under Paragraph (1) of this Rule may not be changed during the calendar year of election, except when the Commissioner disapproves an insurance carrier's election to be a direct assignment carrier.
- (3) Insurers shall continue to be responsible for their liabilities under all prior residual market plans, as determined by the designated rate service organization under the provisions of the articles of agreement or the quota share reinsurance agreement, in addition to any deficits experienced under the Plan.
- (4) The Commissioner may enter into agreements on behalf of the participating insurers to carry out the purposes of the Plan, including, but not limited to the Reinsurance Mechanism.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.11 ACCURACY OF INFORMATION PROVIDED BY AN EMPLOYER.

Policies issued through the Plan shall be issued under the presumption that the payroll and classification information submitted by an employer is accurate; an employer shall not be permitted to modify such information as part of its application to the Plan without the written permission of the Plan's servicing carrier, or the direct assignment carrier, or the Administrator. The servicing carrier, direct assignment carrier, or the Administrator, however, is authorized to modify such information as appropriate.

Authority: T.C.A. §§56-5-314(c) and 320.

0780-1-79-.12 EFFECT OF RULES ON EMPLOYERS' OBLIGATIONS UNDER PRIOR PLANS.

This Chapter shall not change the obligations of employers to pay premiums due under any previous residual market plan used in this State. This responsibility shall include the responsibility to pay premiums owed after the policies are terminated which reflect adjustments to the employer's estimated premium made as the result of premium audits conducted within one-hundred-and-twenty (120) days of termination. This period of time may be extended by the servicing carrier or direct assignment carrier if the employer does not cooperate with the servicing carrier or direct assignment carrier in providing reasonable access to make the audit or does not comply with reasonable requests for information. Failure to pay such audit premiums shall result in making the employer ineligible for coverage under the Plan, absent the existence of a formal, non-frivolous dispute.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.13 PREMIUMS.

Each servicing carrier is responsible for the collection of all premiums on all risks assigned to each respective servicing carrier under the Plan until such premiums become forty-five (45) days past due. At such time, the collection responsibilities will move to a collection agency designated by and contracted with the Administrator.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.14 SUBROGATION.

In the event that a servicing carrier recovers any money by way of subrogation or otherwise, other than from a reinsurer, on a claim for which the servicing carrier has been reimbursed by a reinsurer, the servicing carrier is responsible for reimbursing or otherwise crediting the reinsurer for amounts paid by the reinsurer on account of such claim, but not more than the total amount so recovered less expenses incurred in securing such recovery.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.15 REINSURANCE MECHANISM.

- (1) A participating insurance carrier shall be assessed for the amount of any deficit in proportion to the share of the voluntary workers' compensation premium written by such participating insurance carriers during the calendar year of the plan period with respect to which a deficit is incurred.
- (2) Failure of a participating insurance carrier to pay its proper assessment shall be grounds for:
 - (a) The suspension or revocation of an insurer's certificate of authority; and
 - (b) Any legal action initiated by the Administrator or the affected servicing carriers(s) against the insurer brought to recover any unpaid assessment owed to the Plan under this Chapter.
- (3) Direct assignment carriers shall not participate in any deficit assessment or surplus distribution conducted under the Plan.

- (4) In order to assist the determination of the existence of a deficit, each servicing carrier shall segregate its voluntary workers' compensation premium experience from its business transactions from Plan operations.
- (5) The expenses and duties associated with analyzing the data to determine whether there is a deficit or a surplus shall be borne by the Administrator as a function of the Administrator's responsibilities. The actuarial analysis serving as the basis for surplus or deficit is subject to the review of the Commissioner. The expenses for administering any surplus/deficit under this Rule shall be reasonable and subject to review by the Commissioner.
- (6) The Commissioner is to be apprised by the Administrator, in writing, at the end of each fiscal quarter of its actuarial estimate as to the likelihood of a deficit and the amount thereof. Such estimates shall include a valuation of the probability of any future deficits based on amounts already incurred, determined by an evaluation procedure approved by the Commissioner; such an evaluation procedure may be recommended to the Commissioner.
- (7) Should a deficit be indicated by the Administrator's actuarial estimate, the Administrator shall submit to the Commissioner a projection of when assessments are expected to begin. In addition, the Administrator shall:
 - (a) Perform all of the duties necessary to administer an assessment of the participating insurance carriers, should a deficit occur; and
 - (b) Clearly distinguish in an assessment the extent to which it is a Plan deficit or a deficit occurring under any prior residual market mechanism used in this State, if applicable.
- (8) The Administrator may prospectively reserve for and apportion assessments among the participating insurance carriers, provided that actuarially justified data is provided to the Commissioner as to the necessity and valuation of such assessments at least thirty (30) days prior to the making of such assessments.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.16 INSOLVENCY OF A SERVICING CARRIER.

- (1) In the event of the insolvency of a servicing carrier, any reimbursement for a deficit shall be payable by the Plan directly to the servicing carrier or to its liquidator, receiver, conservator, or statutory successor on the basis of the liability of the servicing carrier without diminution because of the insolvency of the servicing carrier or because the liquidator, receiver, conservator or statutory successor of the servicing carrier has failed to pay all or a portion of any claim.
- (2) The liquidator, receiver, conservator or statutory successor of the servicing carrier shall continue to give written notice to the Administrator of the pendency of all claims against such servicing carrier per the terms of this plan document, indicating the policies, claims or losses submitted by the servicing carrier to the Plan within a reasonable time after the claims or losses are filed in the conservation or liquidation proceeding or in the receivership. Such claims or losses will be reported to the Plan at one hundred percent (100%) of the amount of the servicing carrier's original liability to the insured and not on the basis paid or settled by the servicing carrier or its liquidator, receiver, conservator or statutory successor.
- (3) At any time during the pendency of the servicing carrier's liquidation, rehabilitation, receivership or conservatorship, the Administrator shall have a right to verify, audit, or investigate any claims or losses reported to the Plan.

- (4) The Administrator may interpose, at the expense of the Plan, in any proceeding where such claims or losses are to be adjudicated, any defense or defenses that it may deem available under the Plan to the servicing carrier or its liquidator, receiver, conservator or statutory successor. The expense thus incurred by the Administrator on behalf of the Plan shall be chargeable, subject to the approval of the court, against the servicing carrier as part of the expense of conservation or liquidation to the extent of a pro rata share of the benefit which may accrue to the servicing carrier solely as a result of the defense undertaken by the Administrator.
- (5) Notwithstanding anything to the contrary, any specific provisions within this Rule that conflict with T.C.A. §§56-9-101, *et seq.* shall be considered void and unenforceable.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.17 SURPLUS ADMINISTRATION.

- (1) In the event the combined results of the Plan (excluding results from direct assignment carriers) results in a surplus for a particular Plan period, the Administrator shall establish a surplus trust fund in a federally chartered bank which is located in Tennessee. All funds from this trust shall be earmarked to benefit the participating insurance carriers consistent with this Rule.
- (2) As determined by the Plan's plan period experience where conservative actuarial estimates may be determined, funds in the surplus trust fund shall be distributed (for each year of the distribution process) by the Administrator to the servicing carriers, minus any reserves needed for future assessments and expenses related thereto.
- (3) Participating insurance carriers shall share in the surplus allotted to participating insurance carriers based on their pro rata share of the amount of voluntary workers' compensation premiums written during the calendar year in which the surplus is incurred when compared to all voluntary workers' compensation premiums written by all participating insurance carriers collectively for the same period. Voluntary workers' compensation premiums written by direct assignment carriers and their affiliates shall be excluded when determining a carrier's pro rata share.
- (4) At no time shall a distribution of the surplus be made to any participating insurance carrier unless that distribution is in excess of twenty dollars (\$20.00). All fund disbursements that do not meet the minimum twenty dollar (\$20.00) threshold will remain in the surplus trust fund, until such funds are ultimately distributed as set forth in Paragraph (5) of this Rule. Any such funds that remain after the final disbursement shall be retained in the ALDA for final distribution once all claims have been closed. Any participating insurance carrier that has an unpaid premium balance, about which there is no formal written dispute with the Plan shall not be eligible to receive a surplus refund until such unpaid premium balance has been paid in full.
- (5) Immediately prior to the first surplus distribution, the Administrator shall place fifteen percent (15%) of the surplus funds in the ALDA until such time as all claims for policies issued during that particular calendar year have been closed. At such time when all claims have been closed, all funds, including investment income, in the ALDA shall be distributed to the participating insurance carriers in the same pro rata manner as described in Paragraph (3) of this Rule.
- (6) For each calendar year period of the Plan, the method by which the trust will be funded is as follows:
 - (a) Fifty percent (50%) of the funds in the surplus trust fund, excluding those funds held in the ALDA, shall be determined at that time and distributed to the trust recipients twelve (12) months following the expiration of each one (1)-year plan period of the Plan.

- (b) Fifty percent (50%) of the remaining funds in the surplus trust fund, excluding those funds held in the ALDA, shall be transferred to the trust recipients twenty-four (24) months following the expiration of each one (1)-year plan period of the Plan.
 - (c) Fifty percent (50%) of the remaining funds in the surplus trust fund, excluding those funds held in the ALDA, shall be transferred to the trust recipients thirty-six (36) months following the expiration of each one (1)-year plan period of the Plan.
 - (d) One-hundred percent (100%) of the remaining funds in the surplus trust fund, excluding those funds held in the ALDA, shall be transferred to the trust recipients forty-eight (48) months following the expiration of each one (1)-year plan period of the Plan.
- (7) An actuarial review of the surplus trust fund for each plan period shall occur annually in order to ensure that the fund adequately reflects changing economic and market conditions, and any significant change in the development of the loss experience for the particular Plan period. The Administrator, acting on behalf of the Plan, shall retain a certified public accounting firm, subject to approval by the Commissioner, to act as the administrator of any disbursement of monies in the surplus trust fund, and shall provide for an annual report of any particular surplus trust fund plan period. The actuarial analysis serving as the basis for surplus or deficit is subject to the review of the Commissioner. In the event that the experience deteriorates to the point where a surplus becomes a deficit, all of the deficit shall be paid as per the Reinsurance Mechanism set forth in this Chapter.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.18 INTERSTATE ASSIGNMENTS.

- (1) Any employer assigned to a servicing carrier or direct assignment carrier under the Plan is provided with coverage for its Tennessee-based employees who may have business reason to travel to other states, including the District of Columbia, on a temporary and incidental basis where the duration of the operations in the other state is less than ninety (90) days. The servicing carrier or direct assignment carrier shall furnish such insurance on an endorsement form approved by the Commissioner. Such form shall indicate that employees based out of states other than Tennessee are not covered by this endorsement.
- (2) An employer with operations in other states that have a duration of ninety (90) days or more must notify the servicing carrier regarding the need for insurance in such additional states for their Tennessee workers.
 - (a) The servicing carrier(s) for the Plan will, upon the request of an employer, offer coverage for Tennessee domiciled employers for any of the fifty (50) states in which their employers have exposures except states with monopolistic state funds, or competitive state funds, joint underwriting associations, non-participating pools, or other states that have not agreed to allow the Plan to provide such coverage extensions.
 - (b) Extension of coverage to another state will only be provided as long as the payroll exposures in such other state are less than the Tennessee payroll exposures, and the payroll attributable to such other exposures in such other states does not exceed two hundred fifty thousand dollars (\$250,000) during any one (1) plan period. Such coverage extensions to another state shall be considered to be another state's coverage exposure, and therefore, it will be counted as a Plan premium, and will be reinsured through the Reinsurance Mechanism, unless reinsured by an alternative mechanism acceptable to the servicing carriers and the Commissioner. Such coverage will be subject to these rules, where it does not conflict with the other state's rating plans or rules.

- (c) Employers domiciled outside of Tennessee with Tennessee exposures shall not have their non-Tennessee exposures insured under the Plan.
- (3) The Administrator shall provide assistance to employers seeking coverage in those states where coverage is not available through the Plan. The Administrator shall provide basic information to assist employers in obtaining coverage in those other states.

Authority: T.C.A. §56-5-314(c).

0780-1-79-.19 ASSIGNMENT FORMULA.

All employers qualifying for coverage under the Plan shall be randomly assigned by the Administrator to the servicing carrier(s) and direct assignment carriers, in keeping with their assigned premium proportion.

Authority: T.C.A. §56-5-314(c)

0780-1-79-.20 DISPUTE RESOLUTION PROCEDURE.

- (1) It shall be the function of the Administrator to facilitate the resolution of disputes over the general operation of the Plan arising from the servicing carriers, the direct assignment carriers, and insured, insurance producers or others, as opposed to disputes arising under the Reinsurance Mechanism. Disputes arising under the Reinsurance Mechanism by other insurers or others affected shall be resolved by the Administrator or the Commissioner and shall be resolved in accordance with the requirements provided in Rule 0780-1-79-.15.
 - (a) Any person affected by the operation of the Plan may file a formal dispute with the Administrator. Such dispute must set forth in writing with particularity the nature of the dispute, the parties to the dispute and the relief sought and basis thereof. In cases involving premium, any undisputed premium must continue to be paid to continue coverage. The Administrator may secure such additional information it deems necessary to make a decision.
 - (b) Upon receiving the written dispute, the Administrator shall notify the Commissioner by sending a copy of the written dispute to the Department.
 - (c) The Administrator shall render a decision in writing regarding the dispute within thirty (30) calendar days of receiving enough information to make a decision. The decision shall be in the form of a policy-related action to correct or amend the disputed issue, or a written explanation of the specific reasons the dispute is determined invalid. The Administrator shall include with its explanation the ability to appeal the Administrator's decision and the process for filing the appeal.
 - (d) As part of the formal dispute process, the Administrator will make available, at no cost to either party, a client-relations consultant who shall act as an impartial, third-party dispute resolution facilitator, should both parties desire to use the services of the client-relations consultant.
- (2) Any party adversely affected by a decision made by the Administrator concerning a formal dispute or a decision rendered in the administration of the Reinsurance Mechanism may appeal such decision to the Commissioner. All such appeals must:
 - (a) Be in writing and filed with the Commissioner within thirty (30) days of receipt of the notice of the decision of the Administrator;

- (b) Contain a short and plain statement as to what portion of the Administrator's decision is being appealed and the grounds for such appeal. The appellant must also file the written decision made by the Administrator; and
 - (c) Be sent to all parties to the dispute at the same time the appeal is filed with the Commissioner. In sending the appeal, the appellant may use any method allowed by law for legal service of process.
- (3) Any hearing of an appeal by the Commissioner shall be conducted in accordance with all applicable provisions of law, including the "contested case" provisions of the UAPA at T.C.A. §§4-5-301, *et seq.*, the Uniform Rules of Procedures for Hearing Contested Cases Before State Administrative Agencies at Tenn. Comp. R. & Regs. ch. 1360-4-1 and the Tennessee Rules of Civil Procedure.
 - (4) Unless otherwise determined by the Commissioner, the Commissioner or his/her designee shall hear all such appeals in the presence of an administrative judge, as authorized by T.C.A. §4-5-301.
 - (5) The Insurance Division of the Department may intervene in any appeal authorized under this Rule.
 - (6) The Workers' Compensation Appeals Board is hereby dissolved as of the effective date of these rules with respect to the Plan and any appeals subject to be heard by the Board as of the effective date of these rules shall be transferred over to the Commissioner immediately to be heard in a manner consistent with this Rule.

Authority: T.C.A. §§56-5-309 and 314(c).

0780-1-79-.21 RATE MONITORING.

- (1) The servicing carrier(s) and direct assignment carrier(s) are required to report experience on business written under the Plan to the designated rate service organization authorized by the Commissioner pursuant to T.C.A. §56-5-320. The designated rate service organization shall provide to the Commissioner all requested information necessary for establishing reasonable classifications, rates, and financial information required for the successful operation of the Plan and the total market, and for whatever other purposes the Commissioner from time to time may require for said data.
- (2) Plan rates shall be filed and reviewed in accordance with all laws generally applicable to workers' compensation insurance rates.

Authority: T.C.A. §§56-5-314(c) and 320.

0780-1-79-.22 NON-PUBLIC PERSONAL INFORMATION.

- (1) For purposes of this Rule, the term servicing carrier shall include any reinsurers, subcontractors, vendors, insurance producers or other entities or persons utilized by or associated with the servicing carrier in the administration and insuring of the Plan.
- (2) Non-public personal information, whether provided orally, in writing, via computer media, or by other means, given to insurance producers, agencies, brokers, insurers, or their clients, required to properly evaluate, underwrite and insure risks in accordance with the plan document, shall be provided by such persons and entities to the servicing carrier(s) for the evaluation, underwriting and insurance purposes. In consideration of the disclosure of such information, the servicing carrier(s) agree(s) to and shall comply with the following provisions:

- (a) Except as required by law, the servicing carrier(s) and/or Administrator shall keep in confidence and shall not, except as directed by the insured, disclose to any third party, or use for the benefit of any third party, such non-public personal information, regardless of the form or format of the disclosure; such information shall be used by the servicing carrier(s) solely for the evaluating, underwriting and insuring of workers' compensation insurance coverage under the Plan, and not for any other purpose without the prior approval of the insured.
 - (b) The servicing carrier(s) and/or Administrator shall take all reasonable measures necessary to protect the confidentiality of non-public personal information in its possession from disclosure to any other third party, except as directed by the insured. The employees of the Administrator shall be required to sign a confidentiality agreement that meets the effect of this Rule. The servicing carrier has no obligation to incur any expenses resisting legal or regulatory process requiring the tender of non-public personal information.
 - (c) The servicing carrier(s) and/or Administrator shall not use any non-public personal information in the furtherance of directly or indirectly requesting, encouraging, or advising any employers who have acquired or seek to acquire coverage through the Plan to utilize the services of any specific insurance producer, agency, broker, insurer or group of insurers for workers' compensation insurance coverage. Notwithstanding the above, non-public personal information shall not include information that:
 - 1. Was already in the servicing carrier's or Administrator's possession prior to such information being provided pursuant to this plan document;
 - 2. Becomes generally available to the public other than as a result of any disclosure by the servicing carrier or Administrator;
 - 3. Becomes available to the servicing carrier or Administrator on a non-confidential basis from a source not known to the servicing carrier or Administrator to be bound by a confidentiality agreement or other obligation of secrecy; or
 - 4. Was developed by the servicing carrier or Administrator independently and without the benefit of information disclosed pursuant to this Chapter.
 - (d) The servicing carrier(s) and/or Administrator shall not give any other person, firm or entity any rights that would circumvent or violate the provisions of this Rule.
- (3) Notwithstanding the confidentiality provisions set forth in this Rule, the Commissioner, the Commissioner of the Tennessee Department of Labor and Workforce Development and any other organization or entity designated by the Commissioner to gather and analyze data for the purpose of establishing rate or loss cost information, or in conjunction with the issuance of reports concerning the workers' compensation market shall have complete and full access to all data, information, and records, whether in printed or electronic form, that is gathered by the servicing carriers, the Administrator, the designated rate service organization, or by any other entity or person. Such access shall include the prompt production of such data, information and records to the Commissioner or the Commissioner of Tennessee Department of Labor and Workforce Development upon request. No charge or fee may be assessed by the servicing carriers, the Administrator or by the designated rate service organization to the Commissioner of the Tennessee Department of Labor and Workforce Development in relation to the production of such information.

Authority: T.C.A. §56-5-314(c).

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2004. (10-50)

**DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF INSURANCE**

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to T.C.A. §50-6-405(b) and (c). 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 Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. CST on the 17th day of December, 2004.

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

For a copy of this notice of rulemaking hearing, contact: John F. Morris or Tracey Gentry Harney, Staff Attorneys, Department of Commerce and Insurance, 500 James Robertson Parkway, Fifth Floor, Davy Crockett Tower, Nashville, Tennessee 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-81
ADMINISTRATION OF SELF INSURANCE WORKERS' COMPENSATION
PROGRAMS BY SINGLE EMPLOYERS OR POOL**

NEW RULES

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0780-1-81-.01 PURPOSE AND SCOPE.

The purpose of this Chapter is to regulate the person(s) administering workers' compensation benefits for employers that self-insure pursuant to T.C.A. §50-6-405(b) and (c).

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.02 DEFINITIONS.

- (1) “Affiliate” or “affiliated” means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.
- (2) “Commissioner” means the Commissioner of the Department of Commerce and Insurance.
- (3) “Control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct and/or cause the direction of the management and/or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by the Insurance Holding Company System Act, T.C.A. §§56-11-201, *et seq.*, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect or the filing of a disclaimer as provided in T.C.A. §56-11-205 (k).
- (4) “Employer” means a single employer that is self-insuring their workers’ compensation liabilities under T.C.A. §50-6-405(a) pursuant to T.C.A. §50-6-405(a) and (b).
- (5) “GAAP” means United States generally accepted accounting principles consistently applied.
- (6) “Insurance producer” means a person who sells, solicits or negotiates a contract of insurance as those terms are defined in this Rule.
- (7) “Insurer” means a person undertaking to provide workers’ compensation insurance coverage through a company requiring a certificate of authority issued pursuant to T.C.A. §56-2-205.
- (8) “NAIC” means the National Association of Insurance Commissioners.
- (9) “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance or plan of self-insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance coverage from insurers for the purchaser.
- (10) “Person” means an individual or business entity.
- (11) “Sell” means to exchange a contract of insurance or plan of self-insurance by any means, for money or its equivalent, on behalf of an insurer, employer, or pool.
- (12) “Solicit” means attempting to sell insurance or a plan of self-insurance or asking or urging a person to apply for a particular kind of insurance or plan of self-insurance from a particular insurer, employer, or pool.
- (13) “Tennessee Insurance Law” means Tenn. Code Ann. §§56-1-101, *et seq.*, as well as any rules promulgated thereunder.

- (14) “Third party administrator” means a person who directly or indirectly collects charges or premiums from, adjusts or settles claims, or provides loss control or account managing services in connection with workers’ compensation insurance coverage offered or provided by a self-insured employer under T.C.A. §50-6-405(a) and (b), or a self-insured pool under T.C.A. §50-6-405(c), except any of the following:
- (a) An insurance producer licensed to sell insurance coverage in this state, whose activities are limited exclusively to the sale of insurance;
 - (b) A person who adjusts or settles claims in the normal course of that person’s practice or employment as an attorney at law and who does not collect charges or premiums in connection with workers’ compensation insurance coverage;
 - (c) A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license;
 - (d) A self-insured employer under T.C.A. §50-6-405(a) and (b), or a self-insured pool under T.C.A. §50-6-405(c) which have been granted a certificate of authority by the Commissioner, as long as their activities are limited to their own self-insurance programs and do not perform such services for others; and
 - (e) A third party administrator who is affiliated with an insurer, as defined in this section, and who only performs the contractual duties (between the third party administrator and the insurer) of a third party administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the third party administrator and is responsible for providing all of the third party administrator’s books and records to the commissioner, upon a request from the commissioner.
- (15) “Pool” means a self-insurance pool operating pursuant to T.C.A. §50-6-405(c).
- (16) “Workers’ compensation benefits and/or insurance coverage” means the benefits intended to pay the liabilities that arise out of the requirements of T.C.A. §50-6-405(a) for an employer’s liability.

Authority: *T.C.A. §50-6-405(b) and (c).*

0780-1-81-.03 WRITTEN AGREEMENT NECESSARY.

- (1) No third party administrator shall act as such without a written agreement between the third party administrator and the employer or pool, and the written agreement shall be retained as part of the official records of the employer or pool and the third party administrator for the duration of the agreement and for five (5) years thereafter. The agreement shall contain all provisions required by this Chapter, except insofar as these requirements do not apply to the functions performed by the third party administrator.
- (2) The written agreement shall include a statement of all of the duties that the third party administrator is expected to perform on behalf of the employer or pool.
- (3) The employer, pool, or third party administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The employer or pool shall fulfill any and all lawful obligations with respect to workers’ compensation benefits affected by the written agreement, regardless of any dispute between employer or pool and the third party administrator.

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.04 PAYMENT TO THIRD PARTY ADMINISTRATOR.

The payment of claim payments forwarded by the employer or pool to the third party administrator shall not be deemed to have been paid to the employee until the payments are actually received by the employee.

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.05 MAINTENANCE OF INFORMATION.

- (1) A third party administrator shall maintain and make available to the employer or pool complete books and records of all transactions performed on behalf of the employer, or pool. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and shall be maintained by the third party administrator for a period of not less than five (5) years from the date of their creation, unless the agreement between the employer or pool and the third party administrator is terminated prior to the five (5) years.
- (2) The Commissioner shall have access to all books and records maintained by a third party administrator for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a third party administrator, insurance producer or an employee or agent thereof acting on behalf of the third party administrator, insurance producer, or obtained by the Commissioner shall be confidential by law and privileged, shall not be subject to public inspection as provided in T.C.A. §10-7-503, shall not be subject to subpoena, and shall not be subject to discovery or admissible in any evidence in any private civil action. However, the commissioner is authorized to use such documents, materials or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties. The costs of such examination, audit, or inspection, including such experts which the commissioner deems necessary to contract, may be assessed, in the discretion of the Commissioner, to the third party administrator, employer, or pool.
- (3) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information referenced in Paragraph (2) of this Rule.
- (4) In order to assist in the performance of his or her duties, the Commissioner:
 - (a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to Paragraph (2) of this Rule, with other state and federal agencies, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information;
 - (b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates or subsidiaries and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information; and

- (c) May enter into agreements governing sharing and use of information consistent with this section.
- (5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this Rule or as a result of sharing as authorized in Paragraph (4) of this Rule.
- (6) Nothing in this Chapter shall prohibit the Commissioner from releasing documents relating to contested cases or examination reports or orders which are open to public inspection pursuant to T.C.A. §10-7-503.
- (7) The employer or pool shall own the records generated by the third party administrator pertaining to the employer or pool, however, the third party administrator shall retain the right to continuing access to books and records necessary to permit the third party administrator to fulfill all of its contractual obligations to employers or pools. Nothing in this Paragraph shall restrict the ability of a third party administrator and an employer or pool from entering into a contract which would allow the third party administrator to make copies of documents in their possession after the termination of their agreement with the employer or pool.
- (8) If the employer or pool and the third party administrator cancel their agreement pursuant to Rule 0780-1-81-.03(3), notwithstanding the provisions of Paragraph (1) of this Rule, the third party administrator may by written agreement with the employer or pool transfer all records to a new third party administrator rather than retain them for five (5) years. In such cases, the new third party administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior third party administrator as required in Paragraph (1) of this Rule.

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.06 RESPONSIBILITIES OF EMPLOYER OR POOL.

- (1) If an employer or pool utilizes the services of a third party administrator, the employer or pool shall be responsible for determining the benefits, premium rates, and claims payment procedures applicable to the benefits and for securing reinsurance, stop loss insurance or excess coverage, if any. The rules pertaining to these matters shall be provided, in writing by the employer or pool to the third party administrator. The responsibilities of the third party administrator as to any of these matters shall be set forth in the written agreement between the third party administrator and the employer or pool.
- (2) Nothing in this Chapter shall relieve an employer or pool of the ultimate responsibility for the competent administration and timely payment of workers' compensation benefits as required by T.C.A. §§50-6-205 and 56-8-104 and any rules promulgated thereunder.

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.07 COLLECTION OF MONIES AND PAYMENTS OF CLAIMS.

- (1) All monies collected by a third party administrator on behalf of or for an employer or pool, and the return of monies received from that employer or pool, shall be held by the third party administrator in a fiduciary capacity. The monies shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the third party administrator in a federally or state insured financial institution. The written agreement between the third party administrator and the

employer or pool shall provide for the third party administrator to periodically, but no less than quarterly, render an accounting to the employer or pool detailing all transactions performed by the third party administrator pertaining to the business underwritten by the insurer.

- (2) If monies deposited in a fiduciary account have been collected on behalf of, or for, one or more employers or pools, the third party administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each employer or pool. The third party administrator shall keep copies of all the records and, upon request of an employer or pool, shall furnish the employer or pool with copies of the records pertaining to the deposits and withdrawals.
- (3) All claims paid by the third party administrator from funds collected on behalf of or for an employer or pool shall be paid only on drafts, electronic transfer, or checks of and as authorized by the employer or pool.
- (4) All third party administrators shall comply with the prompt pay standards set forth in both Tenn. Code Ann. Title 50 and Title 56 for the payment of workers' compensation benefits.

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.08 DISCLOSURE OF CHARGES AND FEES.

Third party administrators shall disclose all affiliates of the third party administrator providing services to the employer or pool and any fees in addition to those paid to the administrator for such services.

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.09 CERTIFICATE OF AUTHORITY.

- (1) A person shall apply to be a third party administrator upon an application to be specified by the Commissioner and shall receive a certificate of authority or license from the Commissioner, prior to performing any function of a third party administrator in this State. It shall be unlawful for any person to operate in this state as a third party administrator without a certificate of authority or license.
- (2) The application shall include or be accompanied by the following information and documents:
 - (a) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, pool agreement, shareholder agreement and other applicable documents and all amendments to such documents;
 - (b) The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;
 - (c) NAIC Biographical Affidavit for individuals who are responsible for the conduct of affairs of the applicant; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;

- (d) Audited annual financial statements or reports for the two (2) most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. The Commissioner reserves the ability to only consider assets that are would be admitted by the NAIC's Accounting Practices and Procedures Manual when evaluating an applicant's financial statement. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:
1. Amounts shown on the consolidated audited financial report shall be shown on the worksheet;
 2. Amounts for each entity shall be stated separately; and
 3. Explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require in order to determine the current financial condition of the applicant.
- (e) A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims adjustment, claims processing, record keeping and underwriting recommendations;
- (f) Such other pertinent information as may be required by the commissioner; and
- (g) A non-refundable filing fee of five hundred dollars (\$500).
- (3) A third party administrator licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers, employers, or pools or other persons utilizing the services of the third party administrator.
- (4) A third party administrator licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.
- (5) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the third party administrator, or any individual responsible for the conduct of affairs of the third party administrator is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had an insurance or a third party administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in Rule 0780-1-81-.10 exists with respect to the third party administrator.
- (6) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended or revoked by the Commissioner, for so long as the third party administrator continues in business in this State and remains in compliance with this Chapter.
- (7) A third party administrator licensed or applying for licensure under this Chapter shall immediately notify the Commissioner of any material change in its ownership, control, or any other fact or circumstance affecting its qualification for a certificate of authority or license in this State.

- (8) All third party administrators shall annually on or before the anniversary date of the granting of its certificate of authority renew its certificate of authority by paying a non-refundable renewal fee of five hundred dollars (\$500) to the Commissioner.
- (9) A third party administrator that holds a license as a service company at the time of the effective date of this Chapter has until January 1, 2006 to obtain a certificate of authority under this Chapter.

Authority: T.C.A. §50-6-405(b) and (c).

0780-1-81-.10 GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE OF AUTHORITY.

- (1) The certificate of authority or license of a third party administrator may be denied, suspended, or revoked if the Commissioner finds that the third party administrator:
 - (a) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this state specifically applicable to third party administrators;
 - (b) Is in an unsound financial or operational condition. The Commissioner, in evaluating the financial or operational condition of a third party administrator, may utilize the criteria contained in Rule 0780-1-66. The Commissioner may consider such other factors in evaluating the financial or operational condition of a third party administrator deemed to be appropriate;
 - (c) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public;
 - (d) Has failed to pay any judgment rendered against it in this state within sixty (60) days after the judgment has become final;
 - (e) Has refused to be examined or to make available its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the third party administrator, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the third party administrator; and any other person who exercises control or influence over the affairs of the third party administrator has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the Commissioner;
 - (f) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered employees to accept less than the amount due them or caused covered employees to employ attorneys or bring suit against the third party administrator or employer or pool to secure full payment or settlement of such claims;
 - (g) At any time fails to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;
 - (h) Or any of the individuals responsible for the conduct of its affairs, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a

partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of its voting stock, voting securities or voting interest; and any other person who exercises control or influence over its affairs; has been convicted of, or has entered a plea of guilty or *nolo contendere* to, a felony without regard to whether adjudication was withheld;

- (i) Is under suspension or revocation in another state; or
 - (j) Has failed to timely file its annual renewal fee pursuant to Rule 0780-1-81-.09.
- (2) The Commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the certificate of authority or license of a third party administrator if the Commissioner finds that one or more of the following circumstances exist:
- (a) The third party administrator is insolvent or impaired;
 - (b) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the third party administrator has been commenced in any state; or
 - (c) The financial condition or business practices of the third party administrator otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.
- (3) If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this Chapter, or a person has acted in violation of Rule 0780-1-81-.9, the Commissioner may, in lieu of suspension or revocation, impose a civil penalty upon the third party administrator, in an amount not to exceed one thousand dollars (\$1000) per occurrence. Each separate day of violation will constitute a separate occurrence for purposes of calculating any civil penalties assessed by the Commissioner pursuant to this Paragraph.
- (4) Any action by the Commissioner to suspend or revoke a certificate of authority pursuant to this Chapter shall be governed by the Uniform Administrative Procedures Act, compiled in T.C.A. §§4-5-101, *et seq.*
- (5) The Commissioner may serve a notice or order in any action arising under this Chapter by registered or certified mail to the third party administrator at the address of record in the files of the Commissioner. Notwithstanding any provisions of law to the contrary, service in the manner set forth herein shall be deemed to constitute actual service on such third party administrator or applicant. The Commissioner may also serve notice of such action to all known employers or pools serviced by the third party administrator.
- (6) Nothing in this Rule shall be deemed to create a private cause of action against a third party administrator.

Authority: T.C.A. §50-6-405(b) and (c).

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2004.
(10-51)

**DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF INSURANCE**

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to T.C.A. §56-5-405(b)(8). 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 Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. CST on the 17th day of December, 2004.

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

For a copy of this notice of rulemaking hearing, contact: John F. Morris or Tracey Gentry Harney, Staff Attorneys, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Pkwy Nashville, Tennessee 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-83
SELF-INSURED WORKERS’ COMPENSATION SINGLE EMPLOYERS**

NEW RULES

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0780-1-83-.01 PURPOSE AND SCOPE.

The purpose of this Chapter is to provide for the administration of the regulation of employers that self-insure their workers’ compensation liabilities in this State pursuant to T.C.A. §50-6-405(b) in order to better protect the health and welfare of the employees working for such employers as well as the public at large.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.02 DEFINITIONS.

- (1) “Aggregate Excess Insurance” means the amount of insurance required to cover the total accumulated workers’ compensation benefits for all claims payable for a given period of time with the Employer retaining an obligation for a designated amount as a deductible and the insurer paying all amounts due thereafter up to a maximum total obligation.

- (2) “Certificate of Authority” means a license issued by the Commissioner to an Employer granting it the authority to insure the workers’ compensation liabilities of its employees in this State.
- (3) “Commissioner” means the Commissioner of Commerce and Insurance.
- (4) “Department” means the Tennessee Department of Commerce and Insurance.
- (5) “Employee” means an employee of an Employer that self-insures its workers’ compensation benefits and liabilities pursuant to T.C.A. §50-6-405(a)(2).
- (6) “Employer” means an employer that self-insures its workers’ compensation liabilities pursuant to T.C.A. §50-6-405(a)(2).
- (7) “Impaired Employer” means an Employer:
 - (a) Whose liabilities exceed the value of its assets and/or that has stopped paying debts in the ordinary course of business or is unable to pay them as its debts fall due, as may be shown by an excess of the Employer’s required reserves and other liabilities over its assets;
 - (b) Who has suspended payment of workers’ compensation benefits as determined by the Commissioner;
 - (c) Who has filed for relief under bankruptcy laws;
 - (d) Against whom bankruptcy proceedings have been filed; or
 - (e) For whom a receiver has been appointed by a court of this state.
- (8) “Known Claims” means claims that have been incurred by an employee of the Employer and submitted to Employer for payment of workers’ compensation benefits.
- (9) “Loss Prevention Effort” means an ongoing effort by the Employer to integrate health and safety into the workplace in such a manner that occupational injuries and illnesses are reduced.
- (10) “Loss Prevention Plan” means a plan developed by the Employer with the primary emphasis on reduction of workplace injuries and illnesses.
- (11) “Loss Prevention Services” means services designed to advise and assist employers in the identification, evaluation, and control of existing and potential causes of accidents and occupational health and safety problems.
- (12) “Loss Prevention Services Program” means a program intended to promote occupational health and safety, and to help eliminate and control work hazards to employees.
- (13) “Loss Reserves” means funds of the Employer immediately available to pay:
 - (a) Known or open claims and expenses therewith;
 - (b) IBNR and expenses associated therewith;
 - (c) Unearned premiums; and

- (d) Bad or uncollectible debts.
- (14) “NAIC” means the National Association of Insurance Commissioners.
- (15) “Person” means an individual or a business entity.
- (16) “Qualified Actuary” means an individual who;
- (a) Is a member in good standing of the American Academy of Actuaries and an associate or fellow of the Casualty Actuarial Society;
 - (b) Is qualified to sign statements of actuarial opinion for workers’ compensation insurance company annual statements in accordance with the American Academy of Actuaries and Casualty Actuarial Society’s qualification standards for actuaries signing such statements;
 - (c) Is familiar with the reserve requirements applicable to workers’ compensation insurance companies and self-insuring employers; and
 - (d) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
 - 1. Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; or
 - 2. Been found guilty of fraudulent or dishonest practices; or
 - 3. Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary; or
 - 4. Submitted to the Commissioner during the past five (5) years an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provision of this chapter including standards set by the Actuarial Standards Board; or
 - 5. Resigned or been removed as an actuary within the past five (5) years as a result of failure to adhere to generally acceptable actuarial standards.
- (17) “Qualified United States Financial Institution” shall have the meaning assigned by T.C.A. §56-2-209(a).
- (18) “Reserve” means the amount necessary to satisfy all debts, past, present, and future, incurred by reason of industrial accidents or occupational diseases, the origins of which commenced prior to the date of reserve determination.
- (19) “Specific Excess Insurance” means the amount of insurance required to cover the workers’ compensation benefits arising out of a specific occurrence (accident) or occupational disease under the Workers’ Compensation Law with the Employer retaining an obligation for a designated amount as a deductible and the insurer assuming the obligation for all amounts due thereafter up to a maximum total obligation.
- (20) “Third party administrator” means any person engaged by an Employer, excluding an employee of the Employer, to carry out the policies established by the Employer and to provide day to day management of the Employer’s workers’ compensation benefits.

- (21) “Workers’ compensation” means both workers’ compensation and employer’s liability as prescribed under Title 50, Chapter 6 of the Tennessee Code Annotated.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.03 CERTIFICATE OF AUTHORITY REQUIRED.

No person shall act as an Employer without a certificate of authority issued to it by the Commissioner.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.04 APPLICATION FOR CERTIFICATE OF AUTHORITY.

- (1) To apply for a certificate of authority, an Employer shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a non-refundable filing fee as set under T.C.A. §56-4-101(a)(1). A person in this state applying for a certificate of authority to act as an Employer shall, under penalty of refusal, suspension or revocation of the certificate of authority, declare therein that the statements made in the application are true, correct and complete to the best of the person’s knowledge and belief.
- (2) An application of an Employer or prospective Employer shall include the following documentation, together with such other information or documentation as the Commissioner may require:
- (a) Financial statements.
 - 1. The last three (3) Form 10-K’s filed by the Employer with the U. S. Securities and Exchange Commissioner, if such Employer files such 10-K’s; and
 - 2. The Employer’s independently audited financial statements according to Generally Accepted Auditing Standards of the American Institute of Certified Public Accountants with the accompanying footnotes and the auditor’s opinion for the preceding three (3) fiscal years.
 - (b) Loss history.
 - 1. Documentation evidencing the applicant’s loss history to include the following:
 - (i) The applicant’s organizational structure and management background;
 - (ii) The applicant’s profit and loss history for the past three (3) years;
 - (iii) The applicant’s workers’ compensation loss history for the past three (3) years; and
 - (iv) The number of employees employed by the applicant and/or affected by the applicant’s self-insurance program.
 - (c) Administration.

1. A plan for claims administration that is acceptable to the Commissioner and that designates a third party administrator.
 - (i) An Employer may not contract for services with a third party administrator unless the third party administrator holds a certificate of authority issued by the Commissioner pursuant to Rule 0780-1-81.
 2. Copies of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services if the provider of those services is not an employee of the applicant.
- (3) The Commissioner shall evaluate the information contained in the application required to be filed under this Rule to assure that no gaps in funding exist and that funds necessary to pay the financial obligations of the Employer will be available on a timely basis. The Commissioner may, in addition to any other factors set forth in this Chapter, consider the following factors in reviewing an application for a certificate of authority under this Rule:
- (a) The applicant's organizational structure and management background;
 - (b) The applicant's profit and loss history;
 - (c) The applicant's workers' compensation loss history;
 - (d) The source and reliability of the financial information submitted by the applicant;
 - (e) The number of employees affected by self-insurance;
 - (f) The applicant's access to excess insurance markets;
 - (g) Financial ratios, indexes, or other financial measures that the Commissioner finds appropriate, including but not be limited to the following:
 1. Liquidity ratio;
 2. Ratio of current assets to current liabilities;
 3. Ratio of tangible net worth to long-term debt;
 4. Ratio of tangible net worth to total liabilities;
 5. Cash flow;
 6. Working capital; and
 7. Profitability.
 - (h) Any other information considered appropriate by the Commissioner.
- (4) If an applicant is a subsidiary, the applicant's parent organization must guarantee the obligations imposed by this Chapter.

- (5) The Commissioner may require any documents from the Employer necessary to verify the information contained in an application.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.05 SECURITY DEPOSIT REQUIREMENTS.

- (1) Each Employer shall provide security for incurred liabilities for compensation through a deposit with the Commissioner in the following forms:
 - (a) Negotiable securities;
 - (b) Surety bonds;
 - (c) Certificates of deposit; or
 - (d) Letters of credit.
- (2) The sum of the securities on deposit with the Commissioner shall be at least equal to the greater of the following:
 - (a) \$500,000;
 - (b) One hundred and twenty-five percent (125%) of the Employer's incurred liabilities for compensation; or
 - (c) Such other amount determined by the Commissioner to be necessary to provide sufficient security.
- (3) The security, or a contract between the Employer, a depository institution and the Commissioner evidencing the security held in said depository institution for purposes of compliance with this section, shall be held by the Commissioner and shall be conditioned to run solely and directly for the benefit of the employees of the Employer.
- (4) Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the Commissioner for the benefit of the employees of the Employer.
- (5) The security held pursuant to this Rule may be used for the payment of any and all fees or costs required to administer the disbursement of the proceeds to or for the benefit of the employees.
- (6) The venue for any suit filed by the Commissioner under this provision shall be in Davidson County, Tennessee.
- (7) Negotiable securities.
 - (a) All negotiable securities filed under this section shall be the classes of securities listed below and shall be subject to the following requirements:
 1. Obligations issued, assumed or guaranteed by any business entity created or existing under the laws of the United States or any state thereof; provided, that the obligation is or the issuing, assuming or guaranteeing business entities' long term obligations

are rated one (1) of the four (4) highest grades by any of the nationally recognized statistical rating organizations recognized by the securities valuation office of the National Association of Insurance Commissioners or one (1), two (2) or three (3) by the securities valuation office of the National Association of Insurance Commissioners.

2. Obligations, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States, or by any state thereof, or by any county, city, town, village, municipality or district therein, or by any political subdivision thereof, or by any civil division or public instrumentality of one (1) or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, from taxes levied, or by such law required to be levied, upon all taxable property or all taxable income within the jurisdiction of such governmental unit or from adequate special revenues pledged or otherwise appropriated or by such law required to be provided for the purpose of such payment, but not including any obligations payable solely out of special assessments on properties benefited by local improvements;

- (b) Before accepting any negotiable security for purposes of this section, the Commissioner shall determine whether such negotiable security is suitable for such use. The Commissioner shall consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with such negotiable security.

(8) Bonds.

- (a) All bonds filed under this provision of law shall be issued by an insurer authorized to do business in the state of Tennessee and the insurer shall maintain at least an A rating as determined by the A.M. Best Company.
- (b) Any bond issued by an insurer for purposes of this section shall contain a provision requiring the insurer to give the commissioner of commerce and insurance ninety (90) days written notice of its intention to cancel such bond. The insurer shall not cancel such bond until written notice is given to the commissioner of commerce and insurance and a copy of such notice is given to the Employer.
- (c) An insurer that cancels a bond issued pursuant to this section before the date specified in the written notice set forth in subsection (E) above shall be liable to the employees of the Employer for any lawful workers' compensation claims that were incurred on or before the date the bond was cancelled in amounts up to the maximum penal sum of the bond.

(9) Certificates of deposit.

- (a) All certificates of deposit filed under this provision must be held in a depository institution that is located in the state of Tennessee and is either federally chartered or state chartered.
- (b) If a certificate of deposit is filed with the Commissioner, an agreement shall be entered into between the Commissioner, the depository institution and the Employer pledging the certificate of deposit for the benefit of the Employer's employees. The agreement shall contain a provision executed between the depository institution and the Employer requiring the Employer and the depository institution to give at least ninety (90) days written notice of their intention not to renew the certificate of deposit and a provision that, unless written

notice not to renew is given to the Commissioner by the Employer and depository institution within ninety (90) days, the certificate of deposit shall be automatically renewed. The Employer shall submit to the Commissioner, on an annual basis, the status of such certificate of deposit, including evidence of its renewal.

- (c) If the Employer and depository institution fail to comply with Tenn. Code Ann. § 50-6-405(b)(1)(F)(i) or this Rule, the certificate of deposit shall be automatically renewed.
 - (d) Any interest accruing on the certificate of deposit while held in the depository institution shall be returned to the Employer at the termination of the certificate of deposit, with the prior written approval of the Commissioner, provided that no claim is due or asserted against the certificate of deposit by the Commissioner.
- (10) Letters of credit.
- (a) Any letter of credit filed under this Rule must be issued or guaranteed by a qualified United States financial institution that is located in the State of Tennessee.
 - (b) If an Employer elects to secure payment of its workers' compensation claims by way of a letter of credit, an agreement shall be entered into between the Commissioner, the Employer and the depository institution pledging the letter of credit for the benefit of the Employer's employees and naming the Commissioner as beneficiary under such letter of credit.
 - (c) Such letter of credit shall be clean, irrevocable and unconditional and shall contain a provision which requires the issuer to automatically renew such letter of credit unless the issuer shall provide at least ninety (90) days' prior written notice to the Commissioner of an intention to revoke or not renew such letter of credit. The Employer shall annually submit to the Commissioner information regarding the status of such letter of credit, including evidence of its renewal.
 - (d) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or configuration shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first.
- (11) An Employer shall notify the Commissioner if the security no longer meets the requirements of this Rule. Such notice shall be given no later than fifteen (15) days from the time the Employer determines or should have determined that the security no longer meets such requirements.
- (12) Any security held for purposes of compliance with this Rule shall be held for a minimum of ten (10) years after the Employer is no longer self-insured and the Employer shall maintain the fair market value of security on deposit at not less than five hundred thousand dollars (\$500,000), unless otherwise approved by the Commissioner.
- (13) Any security held for purposes of compliance with this Rule shall be in a form substantively that has been previously approved by the Commissioner. Any security that fails to meet any requirement under this section shall not be considered for purposes of determining an Employer's compliance with any of the security maintenance requirements of this Rule.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.06 EXCESS INSURANCE REQUIREMENTS.

- (1) In addition to any other requirements imposed under this Chapter, an Employer shall obtain and maintain excess insurance, both specific and aggregate, in an amount sufficient to cover its liabilities for losses not paid by the Employer and as set by a qualified actuary.
 - (a) Excess insurance policies issued pursuant to this Rule shall be issued by an insurance company holding a certificate of authority issued by the Commissioner to transact such business in this State.
 - (b) Excess insurance policies issued pursuant to this Rule shall contain the following provisions:
 1. A cancellation provision requiring notice to the Commissioner at least sixty (60) days prior to any cancellation or termination;
 2. A non-renewal provision requiring notice to the Commissioner at least sixty (60) days before the end of the policy;
 3. A provision allowing the Commissioner to assume the rights and responsibilities of the Employer under the policy in the event of the insolvency of the Employer; and
 4. A provision requiring all of the following benefits to which an injured employee is entitled to be applied toward reaching the retention amount:
 - (i) Payments made by the Employer;
 - (ii) Payments due and owing by the Employer; and
 - (iii) Payments made on behalf of the Employer by any form of security as required by this Chapter.
 - (c) An Employer shall notify the Commissioner not later than ten (10) days after the date on which the Employer has notice of the cancellation or termination of an excess insurance policy required under this Rule.
- (2) The Commissioner may order an Employer to increase its levels of excess insurance if, in the Commissioner's opinion, such is necessary to prevent the Employer from being considered to be financially hazardous.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.07 RESERVE REQUIREMENTS.

- (1) Each Employer shall establish and maintain adequate loss reserves for, as determined by a qualified actuary:
 - (a) Known claims and expenses associated therewith; and
 - (b) Claims incurred but not reported and expenses associated therewith.

- (2) In addition to the minimum requirements for reserves set out in these Rules, the Commissioner may require, after notice and opportunity for a hearing, additional amounts so that an Employer's reserves are reasonable in relation to the Employer's outstanding workers' compensation liabilities and adequate to meet its financial needs. For purposes of this Rule, in determining whether an Employer's reserves are adequate, the following factors, among others, shall be considered:
- (a) The size of the Employer as measured by its assets, capital and surplus, reserves, and other appropriate criteria;
 - (b) The classes of risks in which the Employer is self-insuring and the experience of losses for such classes;
 - (c) The loss history of the Employer;
 - (d) The nature and extent of the Employer's excess insurance coverage;
 - (e) The quality, diversification and liquidity of the Employer's investment portfolio; and
 - (f) The recent past and projected future trend in the size of the Employer's investment portfolio;

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.08 REPORTING REQUIREMENTS.

- (1) Every Employer within sixty (60) days of its immediately preceding fiscal year shall file an annual report with the Commissioner to include the following:
 - (a) Independently audited financial statements according to Generally Accepted Auditing Standards of the American Institute of Certified Public Accountants;
 - (b) Claims information, such as loss run information, in the form and manner prescribed by the Commissioner;
 - (c) A detailed accounting for reserves for losses outstanding incurred in connection with workers' compensation self-insurance.
- (2) Every Employer shall biennially and within sixty (60) days of its immediately preceding fiscal year file with the Commissioner an opinion from a qualified actuary attesting to the adequacy of the Employer's reserves.
- (3) An Employer that amends its charter, articles of incorporation, or partnership agreement to change its identity or business structure, or in any other manner materially alters its status as it existed at the time of issuance of its certificate of authority shall, within thirty (30) days after the amendment or other action, notify the Commissioner of such action and provide the Commissioner with a copy of such amendment or other action.
- (4) An Employer that changes its third party administrator shall notify the Commissioner at least thirty (30) days prior to any such change, and shall file a copy of the contract with its new third party administrator at that time.

- (5) An Employer who declares voluntary bankruptcy or who is placed into involuntary bankruptcy under U.S.C. Title 11 shall notify the Commissioner, in writing, of the filing of a petition for bankruptcy within twenty-four (24) hours of such filing. An Employer shall also so notify the Commissioner of any affiliates of the Employer which have declared bankruptcy or have been placed into involuntary bankruptcy under U.S.C. Title 11.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.09 LOSS PREVENTION.

Each Employer shall implement and maintain a loss prevention effort, loss prevention plan, and a loss prevention services program and shall maintain written documentation of such plan and provide such documentation to the Commissioner upon request.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.10 TAXES AND DELINQUENCIES.

- (1) Each Employer shall be subject to pay a tax computed pursuant to T.C.A. §56-4-207. Such tax shall also include the surcharge imposed on insurance companies pursuant to T.C.A. §56-4-207 to be earmarked for the administration of the Tennessee Occupational Safety and Health Act, T.C.A. §50-3-101, *et seq.*
- (2) Any Employer failing and neglecting to make such returns and payments promptly and correctly on or before June 30 of each year shall forfeit and pay to the Commissioner, in addition to the amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part thereof of delinquency; provided, that should the period of delinquency exceed one (1) month, the rate of penalty will be an additional five percent (5%) for the second month or fractional part thereof and penalty thereafter at the rate of one half of one percent (.5%) per month of the amount of tax due, the maximum penalty not to exceed ten thousand dollars (\$10,000) for any Employer not more than three (3) days delinquent. All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest herein provided for shall apply to any part of the tax unpaid by the due date and no such penalty or interest may be waived.
- (3) The Commissioner has the discretion, for good cause shown, upon application made in advance of delinquency date, to grant an extension of time determined by the Commissioner but not to exceed sixty (60) days to an Employer to file the premium tax returns and pay the tax imposed by T.C.A. §56-4-207, without penalty attached, but such tax shall bear interest as herein provided from the date the amount was due.
- (4) Any Employer failing to pay the tax due plus penalty and interest for sixty (60) days beyond the due date shall thereafter be barred from transacting any business of self-insurance in the state until these taxes and penalties are fully paid, and the Commissioner shall revoke the certificate of authority granted to the Employer to transact business in the state.
- (5) Notwithstanding any other provisions of this Chapter, no grace period for the filing of returns and payments shall be allowed. A premium tax return and payment made to the Commissioner shall not be considered as paid on or before the due date unless:

- (a) The premium tax return and payment are received by the Commissioner on or before the due date;
- (b) The premium tax return and payment bears a post office cancellation mark stamped by the United States post office on or before the due date, or are mailed by certified or registered mail, or have a certificate of mailing on or before the due date. A premium tax return and payment received by the Commissioner bearing a metered mail stamp and no post office cancellation mark stamped by the United States post office shall be deemed filed and received on the date such premium tax return arrives at the Commissioner; or
- (c) In the event a premium tax return and payment are mailed but not received by the Commissioner, or received and the cancellation mark is illegible or omitted, such return and payment shall be deemed filed and received on the date they were mailed, if the sender establishes that the premium tax return and payment were deposited in the United States mail. In order to establish proof of mailing under these circumstances, a record authenticated by the United States post office that the original mailing was sent registered mail, certified mail, or by certificate of mailing, shall be the only proof accepted by the Commissioner.

Authority: T.C.A. §§50-6-405(b)(8); 56-4-207; 56-4-216.

0780-1-83-.11 SERVICE OF PROCESS.

Every Employer that has operated, will operate or is operating in this State as a self-insurer shall be deemed through acceptance of its certificate of authority to have appointed the Commissioner as its attorney-in-fact to receive service of legal process issued against it in this State with respect to its self-insurance of workers' compensation liabilities. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the Employer.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.12 EXAMINATIONS AND INVESTIGATIONS.

- (1) The Commissioner has the authority to examine the affairs of any Employer that has applied for or received a certificate of authority under this Chapter in order to determine the financial condition of the arrangement or to determine whether the arrangement is in compliance with all insurance laws and regulations applicable to it. Such examinations shall be conducted when ever deemed necessary but no less than once every five (5) years, and all expenses of such examinations shall be assessed against the Employer, including the costs of contract examiners or specialists.
- (2) The Commissioner has the authority to investigate the affairs of any Employer that self-insured its workers' compensation liabilities in this State in order to determine whether such person is in violation of the Tennessee Insurance Law or this Chapter.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.13 CEASE AND DESIST ORDERS.

- (1) Except as otherwise provided in Paragraph (2) of this Rule, after notice and opportunity for a hearing, the Commissioner may issue an order requiring an Employer to cease and desist from engaging in

any act or practice found to be in violation of any applicable statute or provision under the Tennessee Insurance Law, this Chapter, or any order of the Commissioner.

- (2) Whenever the Commissioner determines that an Employer has self-insured in this State in violation of Rule 0780-1-83-.03, the Commissioner may issue a cease and desist order *ex parte* and without prior notice being given to the Employer; provided, however, that the Commissioner shall provide the Employer notice and the opportunity for hearing to challenge the issuance of the cease and desist order.
- (3) Any order issued pursuant to this Rule will be accompanied by a notice to the Employer as to the right to have a hearing. All hearings conducted pursuant to this Chapter will be done in accordance with the Uniform Administrative Procedures Act, T.C.A. §§4-5-301, *et seq.*
- (4) Without limitation on other remedies provided by law, upon finding that any person or Employer has violated any cease and desist order that is not currently subject to appeal issued by the Commissioner, the Commissioner may seek enforcement of such order, through the Attorney General and Reporter, in the Chancery Court of Davidson County.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.14 SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY.

- (1) After notice and an opportunity for a hearing, the Commissioner may revoke or suspend the certificate of authority or a license issued under this Chapter upon a finding that any of the following exists:
 - (a) The Employer is in a hazardous financial or operational condition. The Commissioner, in evaluating the financial or operational condition of an Employer, may utilize the criteria contained in Rule 0780-1-66 and Rule 0780-83-.03(3). The Commissioner may consider such other factors in evaluating the financial or operational condition of an Employer deemed to be appropriate;
 - (b) The Employer has failed to maintain the security deposit required by Rule 0780-1-83-.05;
 - (c) The Employer has failed to maintain excess insurance in the amount or form required by Rule 0780-1-83-.06;
 - (d) The Employer has failed to pay any premium tax, regulatory penalty or assessment imposed upon the Employer at the time when such obligations are owed;
 - (e) The Employer has failed to cooperate in any examination or investigation initiated by the Commissioner pursuant to Rule 0780-1-83-.12;
 - (f) The Employer, or an officer or director thereof, has failed to comply with any of the provisions of this Chapter, or with any lawful order of the Commissioner, including those issued pursuant to Rules 0780-1-83-.13, within the time prescribed;
 - (g) The Employer, or an officer or director thereof, has failed to comply with any of the provisions of the Tennessee Insurance Law or any regulations issued thereunder;
 - (h) The Employer, or an officer or director thereof, has provided incorrect, misleading, incomplete or materially untrue information to the Commissioner;

- (i) The Employer, or an officer or director thereof, has been convicted of a felony and the Employer has failed to remove the officer or director;
 - (j) The Employer has failed to comply with any law applicable to the Employer with respect to the prompt payment of claims, including, but not limited to, those found in Tenn. Code Ann. Title 50, Part 6, and Title 56;
 - (k) The Employer is not sufficiently qualified or has not employed persons sufficiently qualified to administer a self-insurance program;
 - (l) The Employer fraudulently obtained its certificate of authority; or
 - (m) The Employer made a misrepresentation in the application for the certificate of authority.
- (2) With respect to any Employer licensed or required to be licensed under this Chapter, and in addition to or in lieu of any action taken in Rule 0780-1-83-.13 or Paragraph (1) of this Rule, the Commissioner may assess a civil penalty against such Employer in an amount not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each separate violation of a statute or rule applicable to the Employer. Each day of continued violation constitutes a separate violation for purposes of computing such penalty. For failure to file any financial statements or reports required under this Chapter, the Commissioner may assess a civil penalty of one hundred dollars (\$100) per day for each day of delinquency.

Authority: T.C.A. §§4-5-301, et seq.; 50-6-405(b)(8).

0780-1-83-.15 SURRENDER OF CERTIFICATE OF AUTHORITY.

- (1) An Employer may surrender its certificate of authority to self-insure at any time with the approval of the Commissioner. The Commissioner shall not grant the request of any Employer to surrender its certificate of authority until such time as the Employer has demonstrated to the Commissioner's satisfaction that it has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of self-insurance.
- (2) An Employer whose certificate of authority has been revoked, suspended, surrendered or otherwise terminated is not relieved of the obligation for compensation to an employee for any compensable injury that occurred during the period of self-insurance.

Authority: T.C.A. §50-6-405(b)(8).

0780-1-83-.16 IMPAIRED EMPLOYERS.

If an Employer has become an impaired Employer as determined by the Commissioner, the Commissioner shall protect the employees of such Employer by promptly:

- (1) Calling the security deposit and placing the funds in an account for the Impaired Employer; and
- (2) Begin paying benefits out of the Impaired Employer's account.

Authority: T.C.A. §50-6-405(b)(8).

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2004. (10-52)

**DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF INSURANCE**

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to T.C.A. §56-54-101. 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 Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CST on the 15th day of December, 2004.

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

For a copy of this notice of rulemaking hearing, contact: Tracey Gentry Harney, Staff Attorney, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0780-1-84
MEDICAL MALPRACTICE CLAIMS REPORTING RULES**

NEW RULES

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0780-1-84-.01 PURPOSE AND SCOPE.

The following rules developed by the Department of Commerce and Insurance govern the reporting of medical malpractice claims and expenses. The purpose of these rules is to facilitate the reporting required by T.C.A. §56-54-101.

Authority: T.C.A. §56-54-101.

0780-1-84-.02 DEFINITIONS.

- (1) “Chiropractor” means an individual licensed pursuant to Title 62, Chapter 4.
- (2) “Clinical Pastoral Counselor” means an individual certified pursuant to Title 62, Chapter 22, Part 2.
- (3) “Closed Claims” means claims that have been paid pursuant to a settlement or judgment, including, claims that were settled or adjudicated with the condition of open medical treatment to the claimant.
- (4) “Commissioner” means the Commissioner of the Department of Commerce and Insurance.
- (5) “Dentist” means an individual licensed pursuant to Title 63, Chapter 5.
- (6) “Department” means the Tennessee Department of Commerce and Insurance
- (7) “Licensed Clinical Social Worker” means an individual licensed pursuant to Title 63, Chapter 23.
- (8) “Marital and Family Therapist” means an individual licensed pursuant to Title 63, Chapter 22, Part 1.
- (9) “Medical and Osteopathic Physician” means an individual licensed pursuant to Title 63, Chapter 6 or Chapter 9.
- (10) “Nurse Practitioner” means an individual that holds a certificate of fitness issued pursuant to Title 63, Chapter 7, Section 123.
- (11) “Optometrist” means an individual licensed pursuant to Title 63, Chapter 8.
- (12) “Pharmacist” means an individual licensed pursuant to Title 63, Chapter 10.
- (13) “Physician Assistant” means an individual licensed pursuant to Title 63, Chapter 19.
- (14) “Podiatrist” means an individual licensed pursuant to Title 63, Chapter 3.
- (15) “Professional Counselor” means an individual licensed pursuant to Title 63, Chapter 22, Part 1.
- (16) “Pending Claims” means claims that have not been paid pursuant to a settlement or agreement but have been made known to the reporting entity either by a lawsuit or some other manner.
- (17) “Person” means an individual or business entity.
- (18) “Reporting entity” means the following:
 - (a) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to a Tennessee health care institution licensed under Title 68.
 - (b) Every insurance company or risk retention group providing medical malpractice insurance or professional liability insurance to any of the following:
 1. Podiatrists;
 2. Chiropractors;

3. Dentists;
 4. Medical and Osteopathic Physicians;
 5. Nurse Practitioners;
 6. Optometrists;
 7. Psychologists;
 8. Pharmacists;
 9. Physician Assistants;
 10. Professional Counselors;
 11. Marital and Family Therapists;
 12. Clinical Pastoral Counselors; and
 13. Licensed Clinical Social Workers.
- (c) Every health care institution licensed pursuant to Title 68, or professional listed in this Rule, except the state and those employed by the state, who does not maintain professional liability insurance.

Authority: T.C.A. §56-54-101.

0780-1-84-.03 ANNUAL CLAIMS DATA SUBMISSION REQUIREMENT.

- (1) All reporting entities shall submit to the Commissioner by April 1 of every year, a claims data file containing all information required by this Chapter for medical malpractice claims for the period of January 1 through December 31 of the preceding year.
- (2) The claims data file shall contain the following data as set forth and explained in more detail in Appendix A listed by type of provider and indication of specialty, if any:
 - (a) Date of occurrence of the event that resulted in a medical malpractice claim being filed;
 - (b) Claimant's social security number;
 - (c) License number of health care institution or provider;
 - (d) The damages asserted by the claimant listed separately as follows:
 1. Damages asserted by the claimant other than amounts asserted by a lawsuit; and
 2. Damages asserted by the claimant through a lawsuit.

- (e) The amounts paid on claims listed separately as follows:
 - 1. Amounts paid by the reporting entity to settle a claim; and
 - 2. Amounts paid by the reporting entity pursuant to a judgment.
 - (f) The amounts paid on claims shall be listed separately by the following types of damages:
 - 1. Punitive damages;
 - 2. Compensatory damages; and
 - 3. Non-economic damages paid by the reporting entity.
 - (g) The deductible amount that was not paid by the insurance company or risk retention group;
 - (h) The amounts paid on claims shall be listed separately by the following types of expenses:
 - 1. Amounts paid to attorneys for defense counsel, excluding amounts paid for expert witness fees, court costs, deposition costs, and other costs;
 - 2. Amount of the settlement or judgment that is received by claimant's counsel.
 - 3. Amounts paid for expert witness fees;
 - 4. Amounts paid in court cost;
 - 5. Amounts paid in deposition costs; and
 - 6. Amounts paid in connection with other legal expenses not previously identified.
- (3) The second and subsequent reports filed by April 1 of each year pursuant to this Chapter by each reporting entity shall also contain information identifying those claims that are subject to settlement or judgment which were contained in a prior report as a pending claim.

Authority: *T.C.A. §56-54-101.*

0780-1-84-.04 FORMAT FOR SUBMITTED DATA.

- (1) All data submitted to the Commissioner on the claims data file shall be submitted in both electronic format and on a CD in the form created by the Commissioner.
- (2) All data located in columns shall be in alpha-numeric format unless otherwise stated. When using numeric data, only regular decimal formats will be acceptable. No compressed or binary (small integer or large integer) will be accepted as valid.
- (3) All date data shall be Gregorian USA format with a four (4) digit year (MM/DD/YYYY). This means a two (2)-digit month (with leading zeros when necessary), a slash (/), a two (2)-digit day (with leading zeros when necessary), a slash (/), and a four (4)-digit year.

- (4) All currency data shall be in units of U.S. dollars rounded to the nearest whole dollar amount. Leading zeros and the dollars signs are not necessary but may be used so long as the currency fields are consistent.

Authority: T.C.A. §56-54-101.

0780-1-84-.05 PENALTIES.

Any reporting entity that fails to comply with the provisions of this Chapter shall be subject to a civil penalty of one hundred dollars (\$100) per day.

Authority: T.C.A. §56-54-101.

APPENDIX A

Pending Claims	This should contain information for pending claims that have been asserted through a lawsuit or other means. This should not include information on claims that have been paid pursuant to a settlement or judgment.
Date of Occurrence	This should be the date on which the incident arose that gave rise to the medical malpractice claim.
Claimant’s Social Security Number	This should be for the person making the claim.
License Number	This should be the health care institution or provider’s license number.
Asserted Damages (other than set forth in lawsuits)	This should include an amount that has been asserted against a reporting entity in a manner other than by filing a lawsuit.
Damages Claimed by Lawsuit	This should include the damages asserted against a reporting entity in a lawsuit.
Closed Claims	This should contain information for claims that have been paid pursuant to a settlement or judgment, including claims that were settled or adjudicated with the condition of open medical treatment for the claimant.
Amount Paid by Settlement	This should include the total amount paid pursuant to a settlement between the reporting entity and the claimant.
Amount Paid by Judgment	This should include the total amount paid pursuant to a judgment against the reporting entity.
Punitive Damages Paid	This should include the amount of settlement or judgment that was identified as punitive damages.

Compensatory Damages Paid	This should include the amount of settlement or judgment that was identified as compensatory damages.
Non-Economic Damages Paid	This should include the amount of settlement or judgment that was identified as non-economic damages.
Total Damages Paid	This should include the amount of settlement or judgment that was the sum total of punitive, compensatory and non-economic damages.
Deductible Amount	This should include the deductible amount that was not paid by the insurance company or the risk retention group.
Attorney Fees Paid to Defense Counsel	This should include the amount of that was paid to defend the medical malpractice claim. This should not include the expense related to expert witness fees, court costs, deposition costs, and other legal expenses.
Portion of Settlement or Judgment Received by Claimant's Counsel	This should include the portion of the settlement or judgment that the claimant's counsel received for their services.
Expert Witness Fees	This should include the expert witness fees that were expended by the reporting entity.
Court Costs	This should include the court costs that were expended by the reporting entity.
Deposition Cost	This should include the deposition costs that were expended by the reporting entity.
Other Legal Fees	This should include the other legal fees not specifically identified that were expended by the reporting entity.
Total Legal Expenses	This should include the legal fees that were expended by the reporting entity, including the claimant's attorney fees.
Grand Total Claims Paid	This should include the total amount that was paid on a claim including the amount of settlement or judgment and the total legal expenses expended by the reporting entity, including the claimant's attorney fees.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2004.
(10-53)

DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF INSURANCE

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to T.C.A. §56-6-124(a). 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 Fifth Floor, Conference Room A of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CST on the 15th day of December, 2004.

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

For a copy of this notice of rulemaking hearing, contact: John F. Morris, Staff Attorney, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-85
DISHONEST ACTS BY BROKERS

NEW RULES

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0780-1-85-.01 Purpose and Scope	0780-1-84-.04 Fiduciary Duty
0780-1-85-.02 Definitions	0780-1-84-.05 Penalties
0780-1-85-.03 Disclosure and Misrepresentation	

0780-1-84-.01 PURPOSE AND SCOPE.

The following rules developed by the Department of Commerce and Insurance govern the reporting of medical malpractice claims. The purpose of these rules is to facilitate the reporting required by T.C.A. §56-54-101.

Authority: T.C.A. §§56-6-112 and 124(a).

0780-1-84-.02 DEFINITIONS.

- (1) "Broker" means a person, including a producer licensed pursuant to T.C.A. §56-6-101, *et seq.*, who represents, purports to represent, or allows a client reasonably to assume he or she represents a client in an insurance transaction.
- (2) "Client" means an insured or prospective insured with whom a broker transacts or may transact insurance.

- (3) "Income" means receipt of anything of value.
- (4) "Material fact" means a fact that will more likely than not influence either the particular client or a reasonable client in forming his or her estimate of the advantages and disadvantages of a proposed agreement, policy or relationship, or in making his or her inquiries. A broker has the burden of proving that a fact alleged to have been material is not material.
- (5) "Best available insurers" means the most suitable insurers for the client based on coverage, service, financial security and price, that are willing to provide the requested coverage through the broker.

Authority: T.C.A. §§56-6-112 and 124(a).

0780-1-84-.03 DISCLOSURE AND MISREPRESENTATION.

A broker who fails to disclose to a client all material facts surrounding the broker's receipt or potential receipt of income from a third party, which income derives in whole or in part from a transaction on behalf of the client, commits a dishonest practice in the conduct of business.

Authority: T.C.A. §§56-6-112 and 124(a).

0780-1-84-.04 FIDUCIARY DUTY.

- (1) A broker who places his or her own financial or other interest above that of his or her client commits a dishonest practice in the conduct of business.
- (2) A broker commits a dishonest practice in the conduct of business if, with either new or renewal business, he or she:
 - (a) Fails to provide the client with the proposal of a best available insurer;
 - (b) Advises a client to select an insurer other than a best available insurer;
 - (c) Advises a client not to select a best available insurer from among multiple insurers suggested to the client;
 - (d) Requests an insurer to provide a client anything other than the best quote available to the client;
or
 - (e) Fails to take reasonable measures to obtain a quote from an insurer that might be a best available insurer.

Authority: T.C.A. §§56-6-112 and 124(a).

0780-1-84-.05 PENALTIES.

A broker that commits any dishonest practices, as outlined in this Chapter, shall be subject to sanctions outlined in T.C.A. §56-6-112(a) and or (e).

Authority: T.C.A. §§56-6-112 and 124(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2004. (10-54)

BOARD OF DENTISTRY - 0460

There will be a hearing before the Tennessee Board of Dentistry to consider the promulgation of amendments to rules and new rules pursuant to T.C.A. §§4-5-202, 4-5-204, and 63-5-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 23rd day of February, 2005.

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

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

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0460-1-.01, Definitions, is amended by adding the following language as a new, appropriately numbered and alphabetized paragraph and renumbering the remaining paragraphs accordingly:

- () Oral Prophylaxis – Those specific treatment procedures, performed on transitional or permanent dentition, aimed at removing local irritants to the gingiva and related hard and soft tissue, and including, but not limited to, the removal of plaque or calculus and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing. It is a preventive measure for the control of local irritants. Only a licensed dentist or dental hygienist is qualified to determine the need for and perform the oral prophylaxis.

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

Rule 0460-1-.02, Fees, is amended by deleting subparagraphs (1) (h) and (1) (l) in their entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (2) (h), so that as amended, the new subparagraphs (1) (h), (1) (l), and (2) (h) shall read:

- | | | |
|---------|--|----------|
| (1) (h) | Licensure Renewal Fee – Payable biennially by all licensees, including educational and dual degree licensees, and excluding Inactive Pro Bono licensees. | \$300.00 |
| (1) (l) | Inactive Pro Bono Renewal Fee | \$ 0.00 |
| (2) (h) | Administration of Local Anesthesia Certification Fee – Payable each time an application for certification is filed. | \$ 50.00 |

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, and 63-5-132.

Rule 0460-2-.01, Licensure Process – By Exam, By Criteria (Reciprocity), and Inactive Volunteer, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (4) in its entirety and renumbering the present paragraph (5) as paragraph (4), so that as amended, the new catchline shall read:

0460-2-.01 LICENSURE PROCESS – BY EXAM AND BY CRITERIA (RECIPROCITY).

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

Rule 0460-2-.06, Specialty Certification, is amended by deleting subparagraph (2) (c) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (2) (e) and renumbering the present subparagraph (2) (e) as (2) (f), so that as amended, the new subparagraphs (2) (c) and (2) (e) shall read:

- (2) (c) An applicant who is not certified as a specialist in another state shall have a letter sent directly from the secretary of the American Board of the particular specialty for which application is made, to the Board Administrative Office which indicates that the applicant is certified by the American Board in that specialty and that the applicant is in good standing. All such certificates approved by the Board may be accepted as sufficient for specialty certification in lieu of submitting proof of successful completion of a residency program in a specialty. Acceptance of such certificates is discretionary with the Board.
- (2) (e) An applicant who is certified as a specialist in another state whose requirements for specialty certification are substantially equivalent to those requirements in Tennessee shall have that state's licensing board send proof to the Board Administrative Office which indicates that the applicant is certified in that specialty and that the applicant is in good standing.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-110, 63-5-112, 63-5-113, and Public Chapter 720 of the Public Acts of 2004.

Rule 0460-3-.09, Scope of Practice, is amended by deleting subparagraph (5) (h) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (5) (h) shall read:

- (5) (h) Administration of conscious sedation or general anesthesia, administration of local anesthesia on patients age seventeen (17) and younger, and administration of local anesthesia on patients age eighteen (18) and older without certification as provided in Rule 0460-3-.11.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

Rule 0460-3-.09, Scope of Practice, is amended by adding the following language as new paragraph (5) and renumbering the present paragraphs (5) and (6) as paragraphs (6) and (7):

- (5) Administration of local anesthesia must be under the direct supervision of a licensed dentist who, at that time, is physically present at the same office location. The licensed dental hygienist must possess certification pursuant to Rule 0460-3-.11.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

Rule 0460-4-.03, Examination, is amended by adding the following language as new subparagraphs (4) (a), (4) (b), and (4) (c):

- (4) (a) The testing agency and the applicant shall be notified of the one (1) year time period as provided in Rule 0460-4-.02 (8) (c) 3.
- (4) (b) Applicants who fail any of the examination components may retest as many times as necessary to achieve a passing score during the one (1) year time period as provided in Rule 0460-4-.02 (8) (c) 3.
- (4) (c) Except for the examination processing fee, all fees for retaking the dental assistant registration examination shall be paid directly to the testing agency.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, and 63-5-111.

Rule 0460-5-.02, Schools, Programs and Courses for the Dental Hygienist, is amended by adding the following language as new paragraph (5):

- (5) Certification Course in Administration of Local Anesthesia
 - (a) Application for Board Approval – The director, a dentist licensed in Tennessee, of a certification course in administration of local anesthesia shall make application for approval to operate that course of study on forms to be provided by the Board. The completed application must be received in the Board’s Office at least thirty (30) days prior to the next regularly scheduled Board meeting in order for the Board to review the application. The director of the certification course will be notified in writing of the Board’s action(s).
 - (b) Retention of Approval.
 1. The certification course must be taught at an educational institution as defined in part (5) (c) 2. of this rule and shall maintain strict compliance with all minimum standards for admissions, facilities, instructor(s), equipment, and curriculum as set forth in this rule, as amended/may be amended, in order to obtain and/or retain Board approval.
 2. The certification course shall be subject to on-site inspections by representatives of the Board and/or required to complete such paper surveys, as requested.
 3. The Board shall be notified immediately of any changes made in the operation of the certification course, such as change of location, directorship, and/or instructors. A new certificate of approval will be issued in the event of change in directorship of the course.

4. Certificates of approval shall be issued for two (2) years and shall expire on December 31st every two (2) years.
- (c) Minimum Standards for Admissions, Facilities, Instructor(s), Equipment, and Curriculum.
1. The certification course shall admit only those dental hygienists who are currently licensed, pursuant to Rule 0460-3-.01, .02, or .03, and who submit proof of a minimum of two (2) years of continuous full-time employment in a general practice as a dental hygienist.
 2. The certification course shall be taught at an educational institution accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board.
 3. The certification course may only be taught by:
 - (i) Tennessee licensed dentists who are faculty members at an accredited school of dentistry or dental hygiene and who have experience teaching the administration of local anesthesia; or
 - (ii) Tennessee licensed dental hygienists who are faculty members at an accredited school of dentistry or dental hygiene and who have experience teaching the administration of local anesthesia. Such dental hygienist instructors may only teach the certification course while under the direct supervision of a qualified instructor-dentist.
 4. The clinical instructor-to-student ratio must be one (1) instructor to six (6) students (1:6).
 5. The maximum class size for the certification course is twenty-four (24) students.
 6. The certification course shall consist of a didactic section of twenty-five (25) hours and a clinical section of no less than fifteen (15) hours for a total of at least forty (40) hours of study in administration of local anesthesia.
 - (i) Each student must pass a competency examination on the material covered in the didactic section before continuing to the clinical section of the course. Students who do not pass the competency examination may be offered remediation before the start of the clinical experience.
 - (ii) Passage of a comprehensive competency examination on all material covered in the course, including performing a minimum of thirty (30) satisfactorily performed injections, is required at the end of the course.
 7. The course syllabus must be approved by the Board and meet the following requirements:
 - (i) Didactic Section - The didactic section shall be designed and conducted to provide the student with detailed knowledge of administration of local anesthesia, including didactic studies and clinical experience in the administration of posterior superior alveolar, middle superior alveolar, anterior superior alveolar, nasopalatine, greater palatine, long buccal, mental block, lingual block, inferior alveolar block and infiltration techniques, medical history and physical evaluation of the patient, and the prevention, diagnosis, and management of medical emergencies which can be encountered in the dental patient. The didactic section of the course shall include instruction in all of the following subject matters:

- (I) Medical history evaluation procedures;
- (II) Physical evaluation;
- (III) Understanding pharmacology of local anesthesia and vasoconstrictors;
- (IV) Anatomy of head, neck and oral cavity as it relates to administering local anesthetic agents;
- (V) Indications and contraindications for administration of local anesthesia;
- (VI) Selection and preparation of the armamentaria and record keeping for administering various local anesthetic agents;
- (VII) Medical and legal management complications;
- (VIII) Recognition and management of post-injection complications and management of reactions to injections;
- (IX) Proper infection control techniques with regard to local anesthesia and proper disposal of sharps;
- (X) Methods of administering local anesthetic agents with emphasis on:
 - I. Technique;
 - II. Aspiration;
 - III. Slow injection; and
 - IV. Minimum effective dosage;
- (XI) Medical emergency, prevention, diagnosis, and management;
- (XII) Instruction in the philosophy and psychology of the use of local anesthesia;
- (XIII) A review of the physiology of nerve conduction;
- (XIV) A review of regional anatomy;
- (XV) A survey of local anesthetic agents on nerve conduction;
- (XVI) A review of the metabolism and excretion of local anesthetics;
- (XVII) Instruction on toxicity of local anesthetic drugs;
- (XVIII) Instruction on the clinical manifestations of toxic reactions;
- (XIX) Instruction on the treatment of toxic reactions;
- (XX) Instruction on allergic reactions to local anesthetic drugs;

- (XXI) Instruction on the clinical manifestations of allergic reactions;
 - (XXII) Instruction on the treatment of allergic reactions to local anesthetics;
 - (XXIII) Instruction regarding vasoconstrictor drugs used in local anesthetics;
 - (XXIV) Instruction on the clinical manifestations of toxic reactions to vasoconstrictor drugs used in local anesthesia;
 - (XXV) Instruction on the treatment of toxic reactions to vasoconstrictors used in local anesthesia;
 - (XXVI) Instruction on drug interactions related to local anesthesia;
 - (XXVII) Re-injecting when necessary; and
 - (XXVIII) Estimating the highest safe dosage of local anesthesia based upon the weight and/or age of the patient.
- (ii) Clinical Section - The clinical section must be provided under the supervision of qualified faculty, and the students must be evaluated for competency. The clinical section of the course shall include instruction in all of the following subject matters:
- (I) Evaluation the patient's health status;
 - (II) Taking the patient's vital signs;
 - (III) Administering local anesthetic infiltrations;
 - (IV) Administering local anesthetic nerve blocks; and
 - (V) Monitoring the patient's physical status while under the effects of local anesthetics.
- (d) The instructor shall provide a copy of the syllabus to the student before or at the beginning of each course, setting forth the materials to be presented in the course and the evaluation criteria to be utilized by the clinical instructor to determine successful completion of the certification course.
- (e) The passing grade on each competency examination is set at seventy-five per cent (75%). If the student initially fails any competency examination, the exam may be taken no more than one (1) additional time before the entire course must be retaken and the exam retaken. The examination shall be developed and administered by the course instructors in such a manner as to determine competency for the administration of local anesthesia.
- (f) The director/instructor of the certification course shall, within thirty (30) days after course completion submit a letter, on school letterhead, for each student which attests to the student's successful completion of the course and the student's examination grade. The completed forms shall be submitted directly to the Board's Administrative Office by the director/instructor.
- (g) The certification course shall not issue continuing education credit hours for the course, except to those individuals already certified to administer local anesthesia in Tennessee.

- (h) Failure to adhere to the rules governing the certification course or to provide access to inspection, pursuant to Rule 0460-5-.02 (5) (b), may subject the course provider and students to invalidation of the course results and withdrawal of course approval issued by the Board.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

NEW RULES

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0460-2-.13 Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements
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0460-2-.13 FREE HEALTH CLINIC, INACTIVE PRO BONO AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
- (a) Any dentist licensed to practice dentistry in this state or any other state who has not been disciplined by any dentistry 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 dentist holds or ever held a license to practice dentistry 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 dentists who have not been licensed in Tennessee, comply with all provisions of subparagraphs (1) (c), (1) (d), (1) (e), and (1) (g) of rule 0460-2-.01 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 dentist 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 dentist holding a Special Volunteer License may not do any of the following:
1. Practice dentistry 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 0460-2-.08 and .09, except those requiring the payment of any fees; and
 2. The rules governing continuing education and cardio pulmonary resuscitation as provided by rule 0460-1-.05; and
 3. Disciplinary action for the same causes and pursuant to the same procedures as all other licenses issued by the Board.
- (2) Inactive Pro Bono Practice Pursuant to T.C.A. § 63-6-230 – Applicants who intend to exclusively practice dentistry without compensation on patients who receive dentistry services from organizations granted a determination of exemption pursuant to Section 501 (c)(3) of the Internal Revenue Code may obtain an inactive volunteer license to do so by doing as follows:
- (a) Applicants who currently hold a valid Tennessee license to practice dentistry issued by the Board pursuant to this rule which is in good standing must:
1. Retire their active licenses pursuant to the provisions of rule 0460-2-.09; and
 2. Have submitted to the Board Administrative Office directly from the qualified organization proof of the determination of exemption issued pursuant to Section 501 (c)(3) of the Internal Revenue Code; and
 3. Submit a written certification that they are practicing dentistry exclusively on the patients of the qualified entity and that such practice is without compensation.
- (b) Applicants who do not currently hold a valid Tennessee license to practice dentistry must:
1. Obtain a license by complying with all provisions of subparagraphs (1) (c), (1) (d), (1) (e), (1) (g), and (2) (b) of rule 0460-2-.01 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 2. Have submitted to the Board Administrative Office directly from the qualified organization proof of the determination of exemption issued pursuant to Section 501 (c)(3) of the Internal Revenue Code; and
 3. Submit a written certification that they are practicing dentistry exclusively on the patients of the qualified entity and that such practice is without compensation.
- (c) Inactive pro bono licenses are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0460-2-.08 and .09, and are subject to all rules governing

continuing education and cardio pulmonary resuscitation as provided by rule 0460-1-.05. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.

- (3) Practice Pursuant to the “Volunteer Health Care Services Act” T.C.A. §§ 63-6-701, et seq.
- (a) Any dentist 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 dentistry 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 dentistry 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 dentistry 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 dentist 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 dentistry 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 dentistry only when it has complied with the provisions of T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
- (4) Application review and licensure decisions for these types of licensure shall be governed by rule 0460-1-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-201, 63-5-105, 63-5-132, 63-6-701 through 707, and 63-5-134.

0460-3-.11 ADMINISTRATION OF LOCAL ANESTHESIA CERTIFICATION. A licensed dental hygienist in Tennessee must obtain certification to administer local anesthesia before he/she can administer local anesthesia on any patient age eighteen (18) years or older.

- (1) Qualifications for Certification
- (a) The licensed dental hygienist shall have a minimum of two (2) years continuous, full-time employment in a dental practice as a dental hygienist.
 - (b) The licensed dental hygienist shall successfully complete a Board-approved certification course in administration of local anesthesia.
 - (c) The licensed dental hygienist shall successfully complete the Western Regional Examination Board (WREB) local anesthesia examination or a similar regional examination approved by the Board

- (2) Procedures for Certification – After successful completion of a Board-approved certification course or a certification course from another state that is equivalent to the Board-approved course, an applicant shall:
- (a) submit a completed application on a form provided by the Board Administrative Office; and
 - (b) submit the Local Anesthesia Certification Fee required by 0460-1-.02; and
 - (c) cause verification of successful completion of a Board-approved course to be sent must be sent directly from the school to the Board Administrative Office; and
 - (d) cause verification of successful completion of the Western Regional Examination Board local anesthesia examination or of a similar regional examination approved by the Board to be sent directly from the testing agency to the Board Administrative Office.
- (3) Conditions of Certification
- (a) Certification in administration of local anesthesia is valid only when the dental hygienist has a current license to practice dental hygiene. If the license expires or is retired, the certification is also considered expired or retired and the dental hygienist may not perform administration of local anesthesia until the license is reinstated or reactivated.
 - (b) A licensed dental hygienist with certification to administer local anesthesia shall prominently display, at the place of employment, the current renewal certificate, which is received upon licensure and renewal.
 - (c) A licensed dental hygienist with certification to administer local anesthesia shall administer local anesthesia only under the direct supervision of a licensed dentist who
 - 1. examines the patient before prescribing the procedures to be performed; and
 - 2. is physically present at the same office location when the local anesthesia is administered; and
 - 3. designates a patient of record upon whom the procedures are to be performed and describes the procedures to be performed; and
 - 4. examines the patient upon completion of the procedures.
 - (d) Following the administration of local anesthesia by a licensed dental hygienist the following information shall be documented in the patient record:
 - 1. date and time of administration;
 - 2. identity of individual administering;
 - 3. type of anesthesia administered;
 - 4. dosage/amount administered;
 - 5. location/site of administration; and
 - 6. any adverse reaction.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-5-105, 63-5-108, 63-5-115, and 63-5-116.

0460-3-.12 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any individual licensed to practice as a dental hygienist in this state or any other state who has not been disciplined by any 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 individual holds or ever held a license to practice as a dental hygienist 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 dental hygienists who have not been licensed in Tennessee, comply with all provisions of subparagraph (3) (b) and paragraphs (4), (5), and (8) of rule 0460-3-.01; 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 dental hygienist 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 dental hygienist holding a Special Volunteer License may not do any of the following:
 1. Practice as a dental hygienist 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 0460-3-.07 and .08, except those requiring the payment of any fees; and

2. The rules governing continuing education and cardio pulmonary resuscitation as provided by rule 0460-1-.05; 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 dental hygienist 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 as a dental hygienist 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 as a dental hygienist 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 as a dental hygienist 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 dental hygienist 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 as dental hygienists 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 shall be governed by rule 0460-1-.04.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-201, 63-5-105, 63-6-701 through 707, and 63-5-134.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of October, 2004.
(10-43)

**DEPARTMENT OF HEALTH - 1200
BUREAU OF ALCOHOL AND DRUG ABUSE SERVICES
ALCOHOL AND DRUG ADDICTION TREATMENT PROGRAM**

**CHAPTER 1200-30-3
RULES FOR THE ALCOHOL AND DRUG ADDICTION TREATMENT FUND**

There will be a hearing before the Tennessee Bureau of Alcohol and Drug Abuse Services to consider the promulgation of new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 40-33-211, and 5-10-403. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in the 26th Floor Small Conference Room of the William Snodgrass Tower located at 312 8th Avenue North, Nashville, TN 37247 at 1:00 p.m. on the 21st day of December, 2004.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Bureau of Alcohol and Drug Abuse Services 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 Bureau to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Bureau of Alcohol and Drug Abuse Services, 26th Floor of the William Snodgrass/Tennessee Tower, 312 Eighth Ave. North, Nashville, TN 37247.

For a copy of the entire text of this notice or rulemaking hearing contact: Pat Wilson, Director, Alcohol and Drug Addiction Treatment Program, Bureau of Alcohol and Drug Abuse Services, William Snodgrass Tower, 26th Floor, 312 8th Avenue North, Nashville, TN 37247, (615) 532-7801.

NEW RULES

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1200-30-3-.01	Purpose and Scope	1200-30-3-.05	Monitoring Participant Compliance and Discharging Participants from the Alcohol and Drug Addiction Treatment Program
1200-30-3-.02	Definitions		
1200-30-3-.03	Eligibility for Participation in the ADAT Program	1200-30-3-.06	Payment of Treatment Providers for Services Rendered to ADAT Program Participants
1200-30-3-.04	Admitting Participants to the Alcohol and Drug Addiction Treatment Program	1200-30-3-.07	Payment of Ignition Interlock Devices

1200-30-3-.01 PURPOSE AND SCOPE. The purpose of this subchapter is to regulate the alcohol and drug addiction treatment of persons who are ordered by a court of competent jurisdiction to undergo such treatment, and who are deemed indigent and therefore eligible for the Department of Health’s Alcohol and Drug Addiction Treatment (ADAT) Program pursuant to Tenn. Code Ann. § 55-10-403.

Authority: T.C.A. §§4-5-202, 4-5-204, 40-33-211, 55-10-403, 55-50-504, 68-1-103, 68-24-101, 68-24-201.

1200-30-3-.02 DEFINITIONS.

- (1) Alcohol and Drug Addiction Treatment Fund. Fund established pursuant to Tenn. Code Ann. § 40-33-211(c)(2) and administered by the Department of Health’s Bureau of Alcohol and Drug Abuse Services for the alcohol and drug abuse treatment of participants who meet established program eligibility criteria.

- (2) Alcohol and/or Other Drug Abuse. A condition characterized by the continuous or episodic use of alcohol and/or other drugs resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use as defined in currently accepted diagnostic nomenclature.
- (3) Alcohol and/or Other Drug Dependency. Alcohol and/or other drug abuse which results in the development of tolerance or manifestation of alcohol and/or other drug abstinence syndrome upon cessation of use as defined in currently accepted diagnostic nomenclature.
- (4) ASAM. American Society of Addiction Medicine.
- (5) ASI. The Addiction Severity Index. An assessment tool used in evaluating a person's level of addiction.
- (6) Assessment. A documented evaluation of a person for the purpose of determining treatment and/or rehabilitation needs. An assessment may, but does not necessarily, include examinations and tests determined to be necessary by the treatment staff based on the presenting problems and symptoms of the individual client.
- (7) Bureau. The Department of Health's Bureau of Alcohol and Drug Abuse Services.
- (8) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.
- (9) Department. The Tennessee Department of Health.
- (10) Detoxification. A process of withdrawing a person from a specific psychoactive substance in a safe and effective manner.
- (11) Ignition interlock. A breath alcohol analysis device which is connected to a vehicle's ignition system. The driver must blow a breath sample into the device and obtain an acceptable breath alcohol reading before the vehicle will start.
- (12) List of Authorization. The list of approved Alcohol and Drug Addiction Treatment program participants maintained by the Bureau of Alcohol and Drug Abuse Services.
- (13) Participant. A person who is determined to be indigent by a court of competent jurisdiction in the State of Tennessee according to the criteria set forth in Tenn. Code Ann. § 55-10-403(a)(4)(B), and who is ordered by such court to participate in an approved alcohol and drug abuse treatment program.
- (14) Resource Provider List. The list of approved treatment providers with which the Bureau of Alcohol and Drug Services contracts for the treatment of participants who are determined by the court to be indigent and who are ordered to undergo alcohol and drug addiction treatment.
- (15) Treatment Plan. A document used by alcohol and drug agencies that specifies a participant's projected programmatic activities and continuum of care for a defined time period, subject to continuing assessments.
- (16) Treatment provider. Any alcohol and drug abuse and/or treatment facility licensed as such in Tennessee. The general governance, services, and procedures of treatment providers are set forth in the rules regulating such facilities, 1200-8-17, 1200-8-18, 1200-8-19, 1200-8-20, 1200-8-21, 1200-8-22, 1200-8-23 Tenn. Comp. R. & Regs.

Authority: T.C.A. §§4-5-202, 4-5-204, 40-33-211, 55-10-403, 55-50-504, 68-1-103, 68-24-101, 68-24-201.

1200–30–3–.03 ELIGIBILITY FOR PARTICIPATION IN THE ADAT PROGRAM. A person is eligible to become a participant in the ADAT Program when that person is:

- (1) Convicted of one or more of the following violations by a court of competent jurisdiction in the State of Tennessee:
 - (a) Second or subsequent driving under the influence (DUI) offense, as defined by T.C.A. § 55–10–401; or
 - (b) Driving under the influence with a prior DUI conviction within the past five (5) years; or
 - (c) Driving on a revoked license which was revoked due to a prior DUI conviction; and
- (2) Ordered by the court, as a result of the above current conviction(s), to participate in an alcohol or drug treatment program; and
- (3) Deemed indigent by the court.

Authority: T.C.A. §§4–5–202, 4–5–204, 40–33–211, 55–10–403, 55–50–504, 68–1–103, 68–24–101, 68–24–201.

1200–30–3–.04 ADMITTING PARTICIPANTS TO THE ALCOHOL AND DRUG ADDICTION TREATMENT PROGRAM.

- (1) Once a person becomes eligible to participate in the Bureau of Alcohol and Drug Abuse Service’s alcohol and drug addiction treatment program (ADAT program) according to the criteria set forth in rule 1200–30–3–.03, the following shall occur, subject to the availability of funding and resources:
 - (a) The participant shall execute a release provided by the Bureau for the purpose of releasing information necessary to carry out the order of the court and to provide the court-ordered treatment. The release shall state that information may be disclosed to the Bureau of Alcohol and Drug Abuse Services and shared with the Bureau’s contracted treatment providers for the purpose of authorizing assessment and treatment services and payment to the provider; and
 - (b) The court shall cause to be provided to the Bureau copies of the following:
 1. the court order;
 2. the judgment or guilty plea;
 3. the determination of indigency; and
 4. the release of information signed by the participant.
- (2) Once the Bureau receives from the court a copy of the order authorizing treatment for a participant and certifying that such participant is eligible for the Alcohol and Drug Addiction Treatment Fund, the Bureau shall add the participant’s name to its List of Authorization, and it shall provide the participant or other authorized party making such request on the participant’s behalf with its Resource Provider List and with instructions for contacting a treatment provider; and
 - (a) The participant, or an authorized party acting on the participant’s behalf, shall contact a treatment provider included on the Resource Provider List; and

- (b) The Bureau shall send the participant, other authorized party acting on the participant's behalf, and/or the treatment provider a written letter authorizing the participant to be admitted to the ADAT Program; and
 - (c) Upon admission of the participant into treatment, the treatment provider shall administer the ASAM PPC-2R (American Society of Addiction Medicine's Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, Revised) criteria case review. The information to be included on this form shall include the date of admission. The provider shall assess the participant using the Addiction Severity Index (ASI), and it shall complete admission, continued stay and discharge reviews per ASAM PPC-2 criteria.
- (3) The treatment provided to an ADAT Program participant shall be based on a treatment plan developed and implemented by the treatment provider, which may include a combination of the following types and levels of adult care:
- (a) Ambulatory Services, which include:
 1. Individual Outpatient (ASAM Level I)
 2. Group Outpatient (ASAM Level I)
 3. Intensive Outpatient (ASAM Level II.1)
 4. Partial Hospitalization (ASAM Level II.5)
 - (b) Detoxification Services, which include:
 1. Clinically-Managed Detoxification (ASAM Level III-2D)
 2. Medically-Monitored Detoxification (ASAM Level III-7D)
 - (c) Residential Services, which include:
 1. Clinically-Managed Low-Intensity (Halfway House) (ASAM Level III.1)
 2. Clinically-Managed Medium-Intensity (ASAM Level III.3)
 3. Clinically-Managed High-Intensity (ASAM Level III.5)
 4. Medically-Monitored Intensive (ASAM Level III.7)

Authority: T.C.A. §§4-5-202, 4-5-204, 40-33-211, 55-10-403, 55-50-504, 68-1-103, 68-24-101, 68-24-201.

1200-30-3-.05 MONITORING PARTICIPANT COMPLIANCE AND DISCHARGING PARTICIPANTS FROM THE ALCOHOL AND DRUG ADDICTION TREATMENT PROGRAM. Each treatment provider shall send the Bureau "participant encounter data" for all of its ADAT Program participants at one time on a monthly basis. The participant encounter data shall, when appropriate, include notification that a given participant has successfully completed his or her treatment program.

Authority: T.C.A. §§4-5-202, 4-5-204, 40-33-211, 55-10-403, 55-50-504, 68-1-103, 68-24-101, 68-24-201.

1200--30-3-.06 PAYMENT OF TREATMENT PROVIDERS FOR SERVICES RENDERED TO ADAT PROGRAM PARTICIPANTS.

- (1) The treatment provider's monthly "participant encounter data" required by rule 1200-30-3-.05 shall include "claim encounter data" which is used to generate an electronic invoice for ADAT Program services rendered by the provider that month.
- (2) The Bureau will reimburse the treatment providers monthly out of the Alcohol and Drug Addiction Treatment Fund based upon the electronic invoice that is generated when the "participant encounter data" is received.

Authority: T.C.A. §§4-5-202, 4-5-204, 40-33-211, 55-10-403, 55-50-504, 68-1-103, 68-24-101, 68-24-201.

1200-30-3-.07 PAYMENT OF IGNITION INTERLOCK DEVICES.

- (1) If the court makes a specific finding that it is in the best interest of an individual who meets ADAT Program eligibility criteria, and that it is in the best interest of the public, monies in the Alcohol and Drug Addiction Treatment Fund may be used to pay the reasonable cost of leasing, buying, installing, monitoring and maintaining an ignition interlock device that is ordered for that individual pursuant to § 55-10-412(l).
- (2) Application for the use of such funds shall be subject to the review and approval of the Department of Health according to established policies and procedures.

Authority: T.C.A. §§40-33-211, 40-33-211, 55-10-401, 55-10-412, 68-1-103, 68-24-101, 68-24-201.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on the 22nd day of October, 2004. (10-40)

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

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-117, 68-29-119, and 121. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 17th 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 1200-6-1-.09 Renewal of License, is amended by adding the following language as part (2) (a) 3. and renumbering the current part (2) (a) 3. as part (2) (a) 4., so that as amended, the new part (2) (a) 3. shall read:

- (2) (a) 3. Submission of evidence of successful completion of the continuing education requirements pursuant to Rule 1200-6-1-.12.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, and 68-29-119.

Rule 1200-6-1-.11 Retirement and Reactivation, is amended by adding the following language as new subparagraph (3) (c):

- (3) (c) Submit evidence of successful completion of the continuing education requirements pursuant to Rule 1200-6-1-.12.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, and 68-29-119.

Rule 1200-6-1-.13 Temporary License, 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) All applicants for licensure are required to register to take the next available exam after the date of their application. Any temporary license granted regarding that exam is void on the date of the exam if the applicant fails to take that examination.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, and 68-29-117.

Rule 1200-6-3-.08 Patient Test Management, is amended by adding the following language as new part (1) (b) 2. and renumbering parts (1) (b) 2. and (1) (b) 3. as parts (1) (b) 3. and (1) (b) 4.:

- (1) (b) 2. Outpatient laboratory testing in Tennessee hospitals may be ordered by the following:
 - (i) Any licensed Tennessee practitioner who is authorized to do so by Tenn. Code Ann. § 68-29-121;
 - (ii) Any out of state practitioner who has a Tennessee telemedicine license issued pursuant to rule 0880-2-.16; or
 - (iii) Any duly licensed out of state health care professional as listed in Tenn. Code Ann. § 68-29-121 who is authorized by his or her state board to order outpatient laboratory testing in hospitals for individuals with whom that practitioner has an existing face-to-face patient relationship as outlined in rule 0880-2-.14(7)(a)1., 2., and 3.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, and 68-29-121.

NEW RULE

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1200-6-1-.12 Continuing Education

1200-6-1-.12 CONTINUING EDUCATION.

- (1) Basic requirements – Beginning January 1, 2006, the Tennessee Medical Laboratory Board requires each licensee to successfully complete twenty-four (24) hours of approved continuing education pertaining to laboratory technology or laboratory management for the two (2) calendar year (January 1-December 31) period that precedes the licensure renewal year.
 - (a) The following organizations and entities are authorized to present, sponsor, or approve continuing education courses:
 1. American Board of Bioanalysis
 2. American Board of Clinical Chemistry
 3. American Board of Histocompatibility and Immunogenetics
 4. American Board of Medical Laboratory Immunology
 5. American Board of Medical Microbiology
 6. American Board of Oral and Maxillofacial Pathology
 7. American Board of Pathology
 8. American Medical Association
 9. American Medical Technologists (AMT)
 10. American Osteopathic Board of Pathology
 11. American Red Cross
 12. American Society for Clinical Laboratory Science
 13. American Society for Clinical Pathologists (ASCP)
 14. American Society of Cytopathology
 15. American Society for Cytotechnology
 16. American Society for Microbiology

17. Center for Phlebotomy Education
 18. Centers for Disease Control
 19. Centers for Medicare and Medicaid Services
 20. Clinical Laboratory Management Association and/or its Tennessee chapter
 21. College of American Pathologists
 22. International Academy of Cytology
 23. National Credentialing Agency for Medical Laboratory Professionals (NCA)
 24. National Laboratory Training Network (NLTN)
 25. Southern Association of Cytotechnologists
 26. Tennessee Association of Blood Banks
 27. Tennessee Department of Health
 28. Tennessee Hospital Association
 29. Tennessee Medical Association
 30. Tennessee Society of Pathologists
 31. Tennessee State Society of American Medical Technologists
 32. Accredited colleges and universities
 33. Hospitals licensed by the Tennessee Department of Health, Division of Health Care Facilities.
 34. Laboratories, blood donor centers, plasmapheresis centers, ambulatory surgical treatment centers, and collection stations licensed by the Board whose continuing education courses have been approved by the medical laboratory director or his/her designee.
 35. Organizations and entities approved by other state laboratory personnel licensing agencies.
 36. Organizations and entities approved as P.A.C.E.[®] (Professional Acknowledgment for Continuing Education) course providers.
- (b) Continuing education credit for preparing and teaching continuing education courses – Credit may be earned by preparing and teaching a course presented, sponsored, or approved by an organization or entity listed in subparagraph (a). Documentation of preparing and teaching continuing education courses shall be required as provided in paragraph (3).
1. Courses that were prepared by developing thorough, high quality, readable and carefully prepared written materials will qualify for continuing education credit on the basis of four (4) hours of credit for each hour taught.

2. Courses that were prepared by developing less than five (5) pages of outlines, or not accompanied by written materials, will qualify for continuing education credit on the basis of two (2) credits for each hour taught.
 3. Repeat courses qualify for one-half (½) of the credits awarded for the initial course.
 4. On-site commentators at multi-media courses will receive credit at the rate of two (2) hours for each hour of the program if they have either viewed the course in advance or otherwise engaged in preparation appropriate to the role of commentator.
 5. Each teacher involved in a joint or panel portion of an approved activity shall receive credit as though he or she were the only teacher.
 6. No more than eight (8) hours of continuing education credit shall be awarded for preparing and teaching continuing education courses during any two (2) calendar year period.
- (c) Continuing education credit for published articles – Four (4) hours credit may be earned by preparing and writing an article pertaining to laboratory technology or laboratory management that is published in a peer review journal.
- (2) New licensee requirements
- (a) Continuing education is not required until the new licensee has twenty-four (24) months to successfully complete the two (2) calendar year requirement.
 - (b) The continuing education that may be required to become licensed as a medical laboratory supervisor or as a cytology general supervisor, as provided in Rules 1200-6-1-.21 and 1200-6-1-.23 shall not count towards completion of the reoccurring continuing education required by this rule.
- (3) Documentation
- (a) Each licensee must retain proof of attendance and completion of all continuing education requirements for a period of three (3) years from the end of the two (2) calendar year period in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the Board during its verification process. The Board will not maintain continuing education files for individual licensees.
 - (b) The individual must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Such evidence must be by submission of one (1) or more of the following:
 1. Certificates verifying the licensee's attendance at continuing education program(s). The certificate must include the following: continuing education program's provider, date, clock hours awarded (continuing education units must be converted to clock hours), program title, licensee's name, and license number.
 2. An original letter on official stationery from the continuing education program's provider indicating, date, clock hours awarded (continuing education units must be converted to clock hours), program title, licensee's name, and license number.

3. Certificates or letters verifying successful completion of a written post experience examination to evaluate material retention upon completion of a multi-media and/or electronic course, as provided in paragraph (4). The certificates or letters must include the clock hours awarded (continuing education units must be converted to clock hours), program title, licensee's name, and license number.
 4. Copies of published articles, as provided in subparagraph (1) (c).
- (c) If a licensee submits documentation for training that is not clearly identifiable as appropriate continuing education, the Board will request a written description of the training and its applicability. If the Board determines that the training can not be considered appropriate continuing education, the individual will be given ninety (90) days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted toward completion of any other continuing education requirement.
- (4) Continuing Education Formats - Continuing education courses may be presented in the traditional lecture and classroom formats or, with successful completion of a written post experience examination to evaluate material retention, in multi-media and/or electronic formats.
 - (5) Continuing education credit will not be allowed for the following:
 - (a) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches.
 - (b) Regular work activities, administrative staff meetings, case staffing/reporting, etc., except as provided in subparagraph (1) (b).
 - (6) Continuing Education for Reactivation or Reinstatement of Retired, Revoked, or Expired License.
 - (a) Reactivation of Retired Licensure - An individual whose license has been retired for two (2) years or less will be required to fulfill continuing education requirements as outlined in this rule.
 - (b) Reactivation of Revoked Licensure – No person whose license has been revoked for failure to comply with continuing education may be reactivated without complying with these requirements. Continuing education requirements will accumulate at the same rate as that for those licenses which are active. The required clock hours of continuing education must have begun and successfully completed before the date of reactivation.
 - (c) Reinstatement of Expired Licensure – No person whose license has expired may be reactivated without submitting evidence of continuing education. The continuing education hours documented at the time of reinstatement must equal the hours required, had the license remained in an active status, and must have begun and successfully completed before the date of reinstatement.
 - (d) Continuing education hours obtained as a prerequisite for reactivating or reinstating a license may not be counted toward completion of any two (2) calendar year requirement.
 - (7) Violations
 - (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.

- (b) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
 - (c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
 - (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (b) may be subject to disciplinary action.
 - (e) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward any continuing education requirement.
- (8) Deadline Extension of Continuing Education Requirements
- (a) The Board may grant for no more than six (6) months an extension of the deadline to complete the required hours of continuing education if it can be shown that compliance was beyond the physical or mental capabilities of the licensee seeking the deadline extension.
 - (b) Extension of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the Board's administrative office:
 - 1. A written request for a deadline extension which specifies which deadline is sought to be extended and a written and signed explanation of the reason for the request; and
 - 2. Any documentation which supports the reason(s) for the deadline extension requested or which is subsequently requested by the Board.
 - (c) A deadline extension approved by the Board is effective only for the two (2) calendar year period for which the deadline extension is sought.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-29-105, and 68-29-119.

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of October, 2004. (10-21)

**BOARD OF MEDICAL EXAMINERS - 0880
COMMITTEE ON PHYSICIAN ASSISTANTS**

There will be a hearing before the Tennessee Board of Medical Examiners' Committee on Physician Assistants to consider the promulgation of new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-201, 63-19-104, and 63-19-105, 63-19-201, 63-19-205, 63-19-209, and Public Chapter 579 of the Public Acts of 2004. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 21st 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

NEW RULES

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<p>0880-3-.18 Free Health Clinic and Volunteer Practice Requirements</p>	<p>0880-10-.18 Free Health Clinic and Volunteer Practice Requirements</p>
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0880-3-.18 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any physician assistant licensed to practice in this state or any other state who has not been disciplined by any licensure board may have his/her license converted to or receive a Tennessee “Special Volunteer License,” as defined in T.C.A. § 63-1-201, which will entitle the licensee to practice without remuneration solely within a “free health clinic,” as defined by T.C.A. § 63-1-201, at a specified site or setting by doing the following:
 1. Obtaining from the Committee’s administrative office a “Special Volunteer License” application, completing it and submitting it along with any required documentation to the Committee’s administrative office; and
 2. Have the licensing authority of every state in which the physician assistant holds or ever held a license to practice submit directly to the Committee’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 physician assistants who have not been licensed in Tennessee, comply with all provisions of subparagraphs (2) (c), (2) (e), and (2) (g) of rule 0880-3-.05 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 4. Submitting the specific location of the site or setting of the free health clinic in which the licensee intends to practice along with proof of the clinic’s private, and not-for-profit status.
 - (b) A physician assistant 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 physician assistant holding a Special Volunteer License may not do any of the following:
 - 1. Practice anywhere other than in the free health clinic site or setting specified in the application; and
 - 2. Charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal benefit programs for the provision of medical or any other services; and
 - 3. Practice for any free health clinic that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.
 - (d) Special Volunteer Licenses are subject to all of the following
 - 1. All rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-3-.09 and .11, except those requiring the payment of any fees; and
 - 2. The rules governing continuing education as provided by rule 0880-3-.12; and
 - 3. Disciplinary action for the same causes and pursuant to the same procedures as all other licenses issued by the Committee.
- (2) Practice Pursuant to the “Volunteer Health Care Services Act” T.C.A. §§ 63-6-701, et seq.
- (a) Any physician assistant licensed in this or any other state, territory, district or possession of the United States whose license is not under a disciplinary order of suspension or revocation may practice in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (b) Any person who may lawfully practice in this or any other state, territory, district or possession of the United States under an exemption from licensure and who is not under a disciplinary order of suspension or revocation and who is not and will not “regularly practice,” as defined by T.C.A. § 63-6-703 (3) may practice in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (c) A physician assistant 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) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).
- (4) Application review and licensure decisions for these types of licensure or organization registration shall be governed by rule 0880-3-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-201, 63-6-701 through 707, 63-19-104, and 63-19-105, and Public Chapter 579 of the Public Acts of 2004.

0880-10-.18 FREE HEALTH CLINIC AND VOLUNTEER PRACTICE REQUIREMENTS.

- (1) Free Health Clinic Practice Pursuant to T.C.A. § 63-1-201
 - (a) Any orthopedic physician assistant licensed to practice in this state or any other state who has not been disciplined by any licensure board may have his/her license converted to or receive a Tennessee "Special Volunteer License," as defined in T.C.A. § 63-1-201, which will entitle the licensee to practice without remuneration solely within a "free health clinic," as defined by T.C.A. § 63-1-201, at a specified site or setting by doing the following:
 1. Obtaining from the Committee's administrative office a "Special Volunteer License" application, completing it and submitting it along with any required documentation to the Committee's administrative office; and
 2. Have the licensing authority of every state in which the orthopedic physician assistant holds or ever held a license to practice submit directly to the Committee'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 orthopedic physician assistants who have not been licensed in Tennessee, comply with all provisions of paragraphs (3), (5), and (7) of rule 0880-10-.05 and the Health Care Consumer-Right-To-Know Act compiled at T.C.A. §§ 63-51-101, et seq.; and
 4. Submitting the specific location of the site or setting of the free health clinic in which the licensee intends to practice along with proof of the clinic's private, and not-for-profit status.
 - (b) An orthopedic physician assistant holding a Special Volunteer License is not required to pay any fee for its issuance or the required biennial renewal pursuant to the Division of Health Related Board's biennial birthdate renewal system.
 - (c) An orthopedic physician assistant holding a Special Volunteer License may not do any of the following:
 1. Practice anywhere other than in the free health clinic site or setting specified in the application; and
 2. Charge any fee or receive compensation or remuneration of any kind from any person or third party payor including insurance companies, health plans and state or federal benefit programs for the provision of medical or any other services; and

3. Practice for any free health clinic that imposes any charge on any individual to whom health care services are rendered or submits charges to any third party payor including insurance companies, health plans and state or federal benefit programs for the provision of any services.
- (d) Special Volunteer Licenses are subject to all of the following
1. All rules governing renewal, retirement, reinstatement and reactivation as provided by rules 0880-10-.09 and .11, except those requiring the payment of any fees; and
 2. The rules governing continuing education as provided by rule 0880-10-.12; and
 3. Disciplinary action for the same causes and pursuant to the same procedures as all other licenses issued by the Committee.
- (2) Practice Pursuant to the “Volunteer Health Care Services Act” T.C.A. §§ 63-6-701, et seq.
- (a) Any orthopedic physician assistant licensed in this or any other state, territory, district or possession of the United States whose license is not under a disciplinary order of suspension or revocation may practice in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (b) Any person who may lawfully practice in this or any other state, territory, district or possession of the United States under an exemption from licensure and who is not under a disciplinary order of suspension or revocation and who is not and will not “regularly practice,” as defined by T.C.A. § 63-6-703 (3) may practice in this state but only under the auspices of an organization that has complied with the provisions of this rule and T.C.A. §§ 63-6-701 through 707 and rule 1200-10-1-.12 of the Division of Health Related Boards.
 - (c) An orthopedic physician assistant 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) Submission of any document or set of documents required by this rule or submission of verification of the authenticity, validity and accuracy of the content of any document or set of documents required by this rule directly from the FCVS to the Board Administrative Office shall be deemed to be submission of originals of those documents or sets of documents by the issuing institution(s).
- (4) Application review and licensure decisions for these types of licensure or organization registration shall be governed by rule 0880-10-.07.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-201, 63-6-701 through 707, 63-19-201, 63-19-205, 63-19-209, 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 October, 2004. (10-07)

BOARD OF DISPENSING OPTICIANS - 0480

There will be a hearing before the Tennessee Board of Dispensing Opticians to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-14-101. 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 B Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 16th 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 0480-1-.05, Procedures for Licensure, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (7) and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs (1) and (7) shall read:

- (1) An applicant shall obtain a current application form from the Board's web page on the Internet, respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and all fees required by the form and this rule to the Board's administrative office. In the absence of access to the Internet, an applicant may obtain the application from the Board's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all materials and fees be filed simultaneously.
- (7) An applicant shall submit with his application two (2) letters of recommendation. At least one (1) of these letters shall be from a current or former employer, and neither letter shall be from a spouse or relative.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, and 63-14-103.

Rule 0480-1-.06, Fees, is amended by deleting subparagraph (1) (d) in its entirety and renumbering the remaining subparagraphs accordingly.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-14-101, and 63-14-107.*

Rule 0480-1-.08, Examinations, is amended by deleting paragraphs (1), (2), and (4) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1), (2), and (4) shall read:

- (1) The Board requires the following examinations to be successfully completed for licensure as a dispensing optician:
 - (a) The National Opticianry Competency Examination or its successor, which is graded on a scale of 0-100 with a minimum passing score of seventy (70).
 - (b) The National Contact Lens Registry Examination or its successor, which is graded on a scale of 0-100 with a minimum passing score of seventy-two (72).
 - (c) The Tennessee Dispensing Optician Examination, which is graded on a scale of 0-100 with a minimum passing score of seventy (70). This examination shall be administered by a testing agency approved by the Board. The following subjects may be included on the Tennessee Dispensing Optician Examination:
 1. anatomy and physiology of the eye
 2. applied ophthalmic and geometric optics
 3. ophthalmic lens design
 4. ophthalmic materials
 5. ophthalmic dispensing
 6. contact lenses
 7. laboratory techniques
 8. practical subjects
 9. Tennessee statutes and regulations regarding dispensing opticians.
- (2) Admission to, application for, and the fee required to sit for the examinations are governed by and must be submitted directly to the testing agencies.
 - (a) The applicant shall complete all requirements of Rule 0480-1-.04, Qualifications for Licensure prior to being approved to take the Tennessee Dispensing Optician Examination.
 - (b) The applicant shall cause his/her score results from the National Opticianry Competency Examination and the National Contact Lens Registry Examination to be submitted directly from the testing agencies to the Board administrative office. The applicant shall accomplish this prior to being approved to take the Tennessee Dispensing Optician Examination and in conjunction with the filing of an application for licensure.

- (3) Notwithstanding the provisions of paragraph (3), submitting proof of current certification by the American Board of Opticianry and the National Contact Lens Examiners shall be considered as equivalent to passing the examinations required by subparagraphs (1) (a) and (1) (b) if the applicant's initial certification was awarded based upon passing the examinations required by subparagraphs (1) (a) and (1) (b).

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-103, and 63-14-107.

Rule 0480-1-.09, Renewal of License, is amended by deleting part (2) (a) 4. in its entirety and is further amended by adding the following language as subparagraph (2) (b) and renumbering the existing subparagraph (2) (b) as (2) (c), so that as amended, the new subparagraph (2) (b) shall read:

- (2) (b) The Board shall require an applicant whose license has expired for a period of three (3) years or more to apply, take and pass the examinations as required by the Board pursuant to Rule 0480-1-.08 prior to being considered for reinstatement.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-103, 63-14-106, and 63-14-107.

Rule 0480-1-.10, Supervision, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (b) shall read:

- (1) (b) The licensed dispensing optician will deliver the contact lenses to the patient and inform of the potential need to return to the office of the ophthalmologist or optometrist to ascertain proper fitting and for follow-up care.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, and 63-14-102.

Rule 0480-1-.11, Retirement and Reactivation of License, 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) The Board shall require an applicant whose license has been revoked, suspended, or retired for a period of three (3) or more years to apply, take and pass the examinations, pursuant to Rule 0480-1-.08, prior to being considered for reinstatement.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-103, 63-14-106, and 63-14-107.

Rule 0480-1-.12, Continuing Education, is amended by adding the following language as new parts (1) (b) 1. and (1) (b) 2., and is further amended by deleting part (5) (a) 1. in its entirety and substituting instead the following language, so that as amended, the new parts (1) (b) 1., (1) (b) 2., and (5) (a) 1. shall read:

- (1) (b) 1. Documentation must include the date, location, and total time transpired if the continuing education was presented in a traditional format
- (1) (b) 2. Documentation must include proof of successful completion of a written post-course examination to evaluate material retention if the course was presented in a multi-media format.

- (5) (a) 1. An individual whose license has been retired for three (3) years or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours will be considered replacement hours and cannot be counted during the next licensure renewal period. An individual whose license has been retired for more than three (3) years shall apply, take and pass the examinations as required by the Board, pursuant to Rule 0480-1-.08, prior to being considered for reinstatement.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-103, 63-14-106, and 63-14-107.

Rule 0480-1-.14, Apprenticeship Training Program, is amended by adding the following language as new subparagraphs (1) (a), (1) (b) and (1) (c), and is further amended by deleting subparagraph (5) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a), (1) (b), (1) (c), and (5) (c) shall read:

- (1) (a) The Board administrator shall notify the apprentice when the supervisor, the training program, and the training setting program have been approved.
- (1) (b) The Board administrator shall notify the apprentice of the training program start date.
- (1) (c) Except as provided in Rule 0480-2-.04 (3) and paragraph (7) of this rule, only training that occurs on or after the training program start date shall be counted towards meeting the three (3) year minimum requirement.
- (5) (c) The filing of semi-annual evaluation reports for each apprentice under the direct supervision of a licensed eye care professional is mandatory. The appropriate form will be supplied by the Board. Semi-annual evaluation periods begin six (6) months from initial registration and each six (6) months thereafter until licensure as a dispensing optician has been achieved.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, and 63-14-103.

Rule 0480-1-.22, Guidelines for Contact Lenses, is amended by deleting subparagraph (1) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (b) shall read:

- (1) (b) The licensed dispensing optician will deliver the contact lenses to the patient and inform of the potential need to return to the office of the ophthalmologist or optometrist to ascertain proper fitting and for follow-up care.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-14-101, and 63-14-102.

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of October, 2004.
(10-20)

BOARD OF RESPIRATORY CARE - 1330

There will be a hearing before the Tennessee Board of Respiratory Care to consider the promulgation of a new rule and the repeal of a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-27-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 6th day of January, 2005.

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**NEW RULE****TABLE OF CONTENTS**

1330-1-.22 ABG Endorsement

1330-1-.22 ABG ENDORSEMENT.

- (1) ABG endorsement includes the practice of specimen analysis of blood gases, pH and other associated parameters along with the needed equipment maintenance and quality assurance procedures. For purposes of this rule “associated parameters” includes, but is not limited to:
 - (a) measured parameters, such as:
 1. pCO₂;
 2. pO₂;
 3. O₂ saturation;
 4. carboxyhemoglobin;
 5. methemoglobin; and
 6. fetal hemoglobin; and
 - (b) calculated parameters, such as:

1. sodium bicarbonate;
 2. base excess;
 3. total CO₂; and
 4. O₂ saturation.
- (2) ABG Endorsement Course Content
- (a) An ABG endorsement course shall consist of lecture, laboratory and clinical practice. During the clinical phase of the course the student must perform and be deemed proficient in proper arterial blood puncture (sampling) and handling techniques, arterial blood gas analysis, and arterial blood gas machine maintenance.
 - (b) An ABG endorsement course must include, as a minimum, the following topics:
 1. Arterial blood gas values and interpretation;
 2. Blood gas electrodes, principles of operation, and maintenance;
 3. Oxygen transport;
 4. Acid-base homeostasis;
 5. Assessment of hypoxemia;
 6. Regulation of acids, bases, and electrolytes;
 7. Diagnosis of acid-base disturbances;
 8. Effects of sample size, heparin, temperature, air bubbles, and time delay on the blood sample;
 9. Noninvasive blood gas monitoring;
 10. Quality assurance to include record keeping, preventive maintenance, calibration, quality control, and corrective actions.
- (3) ABG Endorsement Course Approval – Providers of ABG endorsement courses that are not part of a respiratory care educational program must apply to the Board of Respiratory Care to be recognized as an ABG endorsement training course by:
- (a) submitting a letter to the Board of Respiratory Care requesting ABG endorsement course approval; and
 - (b) submitting documents demonstrating the inclusion of the course content as provided in paragraph (2). Documentation shall include:
 1. course syllabi; and
 2. course outlines; and

3. other documents as appropriate.
- (4) Obtaining ABG Endorsement
- (a) Any respiratory care practitioner can obtain ABG endorsement by submitting verification of successful completion of an ABG course approved by the Board that is part of a respiratory care educational program accredited (or holding a “Letter of Review”) by the Committee on Accreditation for Respiratory Care, the California College for Health Sciences “Blood Gas Technology Program”, or other like programs approved by the Board; or
 - (b) An individual can obtain ABG endorsement by submitting verification of a “Special Analyst/ABG” license issued by the Tennessee Medical Laboratory Board.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-27-102, 63-27-104, and 63-27-115.

REPEAL

Rule 1330-1-.22, ABG Endorsement, is repealed.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of October, 2004.
(10-48)



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 October 1, 2004 and ending October 29, 2004.


RILEY C. DARNELL
Secretary of State