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Secretary of State

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PREFACE

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

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

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

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

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

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

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

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ANNOUNCEMENTS

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400

PETITION FOR DECLARATORY ORDER NOTICE OF HEARING

(As required Under T.C.A. §4-5-224)

1. Petitioner's Name: James A. McMillan
2. Petitioner's Attorneys: Elizabeth L. Murphy
Address: 1102 17th Avenue South, Ste. 401.
Nashville, TN 37212

Telephone Number: (615)-327-0404

3. Background:

On May 26, 2005, the Department of Environment and Conservation issued a Notice of determination granting ARAP application No. 05.001 for Babelay Farms, LLC. The developer proposes to build a new residential subdivision that will involve relocating the upstream 578 feet of the existing stream. The applicant has proposed mitigation for the loss of stream footage, by creating a 10' wetland shelf around four proposed pond areas to buffer the quantity and quality of post-construction storm water runoff. A spring located next to the existing stream channel will be piped to the remaining downstream segment of the stream located off the property which empties into Murphy Creek. In addition, 20 acres of the south end of the property will be left in its natural state..

4. Summary of the relief requested:

The Petitioner has requested a ruling from the Board that this Aquatic Resource Alteration Permit (ARAP) violates the Tennessee Water Quality Control Act, T.C.A. §69-3-101 et seq, promulgated rules and regulations, the TDEC published Stream Mitigation Guidelines and federal law.

The Board will convene a contested case hearing in this matter on October 25, 2005.

If you are interested in intervening or participating in this case in any way or think that you may be affected by the possible outcome of this case, you must file a Petition to Intervene, stating your specific interest(s) in the case and your legal position/argument regarding those interests.

Your petition must be filed with: Tennessee Secretary of State
Administrative Procedures Division
312 8th Avenue, North
8th Floor, William R. Snodgrass Bldg.
Nashville, TN 37243

ANNOUNCEMENTS

Copies must also go to:

Devin M. Wells
Tennessee Dept. of Environment & Conservation
Office of General Counsel
401 Church Street
20th Floor L&C Tower
Nashville, TN 37243-1548

ANNOUNCEMENTS

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 10.50%.

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

Kevin P. Lavender

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of October 2005 is 8.34 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 4.34 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

ANNOUNCEMENTS

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) 741-3072.

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-01	Aug 1, 2005	0400 Environment and Conservation	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-17 Drycleaner Environmental Response Program</i> 1200-1-17-.05 Program Qualifications And Procedures For The Tennessee Drycleaner Environmental Response Program	Steve Goins Division of Remediation Department of Environment and Conservation 4th Floor L&C Annex 401 Church St Nashville TN 37243-1538 (615) 532-8599	Oct 15, 2005
08-03	Aug 2, 2005	1680 Transportation	Rulemaking Hearing Rules	New Rules	<i>Chapter 1680-3-5 Local Government Guide Sign Program (Wayfinding Program) Including Conventional State Highways</i> 1680-3-5-.01 Purpose 1680-3-5-.02 Application and Scope of Program 1680-3-5-.03 Definitions 1680-3-5-.04 Alternative Signing Methods 1680-3-5-.05 Program Components and Approvals 1680-3-5-.06 Installation and Maintenance of Signs 1680-3-4-.07 Application for Participation in Program 1680-3-4-.08 Additional Considerations for Participation 1680-3-4-.09 Fees 1680-3-4-.10 Maintenance and Financial Responsibility 1680-3-4-.11 Revocation of Participation in TODS Program 1680-3-4-.12 Appendix	John H. Reinbold Transportation Suite 300 James K. Polk Bldg 505 Deaderick St Nashville TN 37243 (615) 741-2941	Oct 16, 2005

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-04	Aug 2, 2005	1680 Transportation Maintenance Division	Proposed Rule	Proposed Rules	<i>Chapter 1680-3-4</i> <i>Tourist-Oriented Directional Signs</i> 1680-3-4-.01 Purpose and Scope of the TODS Program 1680-3-4-.02 Definitions 1680-3-4-.03 General Requirements for the TODS Program 1680-3-4-.04 Eligibility for Participation in Program 1680-3-4-.05 Design and Content of Signs 1680-3-4-.06 Criteria for Sign Location and Placement 1680-3-4-.07 Application for Participation in Program 1680-3-4-.08 Additional Considerations for Participation 1680-3-4-.09 Fees 1680-3-4-.10 Maintenance and Financial Responsibility 1680-3-4-.11 Revocation of Participation in TODS Program 1680-3-4-.12 Appendix	John H. Reinbold Transportation Suite 300 James K. Polk Bldg 505 Deaderick St Nashville TN 37243 (615) 741-2941	Dec 29, 2005
08-05	Aug 3, 2005	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-4-6</i> <i>Licensure Rules for Child Care Centers Serving School-Age Children</i> 1240-4-6-.10 Transportation	William B. Russell General Counsel Citizens Plaza Building 15th Floor 400 Deaderick Street Nashville Tennessee 37248-0006 (615) 313-4731	Oct 17, 2005
08-06	Aug 3, 2005	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	Chapter 1240-4-3 Licensure Rules for Child Care Centers Serving Pre-School Children 1240-4-3-.10 Transportation	William B. Russell General Counsel Citizens Plaza Building 15th Floor 400 Deaderick Street Nashville Tennessee 37248-0006 (615) 313-4731	Oct 17, 2005

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-11	Aug 8, 2005	1200 Health Medical Lab Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-6-3</i> <i>General Rules Governing Medical Laboratories</i> 1200-6-1-.09 Renewal of License 1200-6-1-.11 Retirement and Reactivation 1200-6-1-.13 Temporary License 1200-6-3-.08 Patient Test Management	Robert J. Kraemer, OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 22, 2005
				New Rule	1200-6-1-.12 Continuing Education		
08-12	Aug 9, 2005	1540 TN Higher Education Commission	Proposed Rules	Amendments	<i>Chapter 1540-1-2</i> <i>Authorization and Regulation of Postsecondary Education Institutions and Their Agents</i> 1540-1-2-.01 Preface 1540-1-2-.02 Role of the Commission Committee and Staff 1540-1-2-.03 Definitions 1540-1-2-.04 Determination for Required Authorization 1540-1-2-.05 Exemption 1540-1-2-.06 Minimum Authorization Standards and Requirements 1540-1-2-.07 Institutional Applications 1540-1-2-.08 Regulations for Specific School Types 1540-1-2-.09 Annual Renewal for Authorization 1540-1-2-.10 Required Minimum Standards 1540-1-2-.11 Institutional Catalog 1540-1-2-.12 Admissions Standards 1540-1-2-.13 Enrollment Agreements and Disclosure Standards 1540-1-2-.14 Financial Standards 1540-1-2-.15 Institutional and Student Records 1540-1-2-.16 Personnel and Instructor Qualifications 1540-1-2-.17 Cancellation and Refund 1540-1-2-.18 Prohibited Acts 1540-1-2-.19 Fair Consumer Practices and Student Complaints	Will Burns Suite 1900 Parkway Towers 404 James Robertson Pkwy Nashville Tennessee 37243-0830 (615) 741-7571	Dec 29, 2005

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-13	Aug 11, 2005	0400 Environment and Conservation TN Petroleum Underground Storage Tank Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-15</i> <i>Underground Storage Tank Program</i> <i>Chapter 1200-1-15</i> <i>Petroleum Release Response Remediation and Risk Management</i> 1200-1-15-.01 Program Scope and Minimum Requirements for Tanks 1200-1-15-.02 UST Systems: Design Construction Installation and Notification 1200-1-15-.06 Release Response And Corrective Action For UST Systems Containing Petroleum Appendices 1 through 6 1200-1-15-.09 Administrative Guidelines and Procedures for the Tennessee Petroleum Underground Storage Tank Fund	Alan M. Leiserson OGC Environment and Conservation 20th Fl L&C Twr 401 Church St Nashville TN 615-532-0131	Oct 25, 2005
08-14	Aug 11 2004	1360 State Division of Charitable Solicitation Charitable Gaming Section	Emergency Rules	New Rules	<i>Chapter 1360-3-2</i> <i>Procedures for Operating Charitable Gaming Events</i> 1360-3-2-.01 Definitions 1360-3-2-.02 Applications for Authorization to hold an Annual Gaming Event- Time to submit applications 1360-3-2-.03 Application Sliding Fee Scale 1360-3-2-.04 Proof of Active and Continuous Existence 1360-3-2-.05 Proof of §501(c)(3) Tax Exempt Status and Purpose(s) 1360-3-2-.06 Description of the Game 1360-3-2-.07 Prohibited/ Allowed Types of Games 1360-3-2-.08 Action by Board of Directors 1360-3-2-.09 Amendment Process- Conflicting Locations Other Amendments 1360-3-2-.10 Conduct of the Games 1360-3-2-.11 Criminal Background Checks 1360-3-2-.12 Accounting Procedures 1360-3-2-.13 Proof that Net Event Proceeds Were Used for Charitable Purpose 1360-3-2-.14 Disqualifications/Civil Penalties 1360-3-2-.15 Co-operation with other State Agencies	Judy McKissack Charitable Solicitation 312 8th Ave N 8th Fl TN Twr Nashville TN 37243 615-741-2555	Aug 11, 2005 through Jan 23, 2005

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-19	Aug 11, 2005	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 0780-1-83 Self-Insured Workers' Compensation Single Employers</i> 0780-1-83-.01 Scope and Purpose 0780-1-83-.02 Definitions 0780-1-83-.03 Certificate of Authority Required 0780-1-83-.04 Application for Certificate of Authority 0780-1-83-.05 Security Deposit Requirements 0780-1-83-.06 Excess Insurance Requirements 0780-1-83-.07 Reserve Requirements 0780-1-83-.08 Reporting Requirements 0780-1-83-.09 Loss Prevention 0780-1-83-.10 Taxes and Delinquency 0780-1-83-.11 Service of Process 0780-1-83-.12 Examinations and Investigations 0780-1-83-.13 Suspension or Revocation of Certificate of Authority 0780-1-83-.14 Surrender of Certificate of Authority 0780-1-83-.15 Impaired Employers 0780-1-83-.16 Severability	John F. Morris or Tracey Gentry Harney Commerce and Insurance 5th Fl Davy Crockett Twr 500 James Robertson Pkwy Nashville TN 37243 615-741-2199	Oct 25, 2005
08-20	Aug 11, 2005	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rules	New Rules	<i>Chapter 0780-1-84 Medical and Professional Malpractice Claims and Expenses Reporting</i> 0780-1-84-.01 Purpose and Scope 0780-1-84-.02 Definitions 0780-1-84-.03 Annual Claims Data Submission Requirement 0780-1-84-.04 Format for Submitted Data 0780-1-84-.05 Penalty	Tracey Gentry Harney Commerce and Insurance 5th Fl Davy Crockett Twr 500 James Robertson Pkwy Nashville TN 37243 615-741-2199	Oct 25, 2005
08-27	Aug 23, 2005	1200 Health TN Medical Lab Boards	Notice of Withdrawal of Rules		1200-6-1-.13 (5)		

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-28	Aug 15, 2005	0400 Environment and Conservation Water Supply	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-5-1</i> <i>Public Water Systems</i> 1200-5-1-.03 Scope 1200-5-1-.05 Supervision of Design and Construction 1200-5-1-.07 Monitoring and Analytical Requirements 1200-5-1-.08 Turbidity Sampling and Analytical Requirements 1200-5-1-.09 1200-5-1-.10 Organic Chemical Sampling and Analytical Requirements 1200-5-1-.11 Radionuclide Sampling and Analytical Methods 1200-5-1-.17 Operations and Maintenance 1200-5-1-.19 Notification of Customers 1200-5-1-.20 Record Maintenance 1200-5-1-.21 Monitoring for Corrosivity Characteristics 1200-5-1-.22 Trihalomethane 1200-5-1-.23 Total Trihalomethane Sampling Analytical and Other Requirements 1200-5-1-.26 Volatile Organic Chemical Sampling Analytical and Other Requirements 1200-5-1-.27 Vulnerability Analysis 1200-5-1-.28 Special Monitoring for Organic and Inorganic Contaminants 1200-5-1-.30 Performance Bonds 1200-5-1-.31 Filtration and Disinfection 1200-5-1-.32 Fees for Public Water Systems 1200-5-1-.34 Drinking Water Source Protection 1200-5-1-.35 Consumer Confidence Reports 1200-5-1-.36 Disinfectants and Disinfection Byproducts	Robert L. Foster Jr. Water Supply 6th Fl L&C Twr Nashville TN 37243-1549 (615) 532-0155	Oct 29, 2005
08-30	Aug 15, 2005	1200 Health Health Licensure and Regulation Emergency Medical Service	Rulemaking Hearing Rule	Amendments	<i>Chapter 1200-12-1</i> <i>General Rules</i> 1200-12-1-.19 Automated External Defibrillator Programs	Juanita Presley Health OGC TN Tower 26th Fl 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Oct 29, 2005

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SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-34	Aug 18, 2005	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendment	<i>Chapter 1200-13-14</i> <i>TennCare Medicaid</i> 1200-13-13-.14 TennCare Partners State-Only Program 1240-2-2-.06 Court Clerk's Notice to Obligor of Issuance of Income Assignment Due to Delinquency	George Woods 310 Great Circle Road Nashville TN 37243 615-507-6446	Aug 18, through Jan 30, 2006
08-37	Aug 19, 2005	0400 Environment and Conservation Remediation	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13</i> <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (79-785)	Robert L. Powell Division of Remediation 4th FI Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Nov 2, 2005
08-38	Aug 19, 2005	0400 Environment and Conservation Remediation	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13</i> <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (40-505)	Robert L. Powell Division of Remediation 4th FI Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Nov 2, 2005
08-39	Aug 19, 2005	0400 Environment and Conservation Remediation	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-13</i> <i>Hazardous Substance Remedial Action</i> 1200-1-13-.13 List of Inactive Hazardous Substance Sites (65-501)	Robert L. Powell Division of Remediation 4th FI Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Nov 2, 2005
08-40	Aug 19, 2005	1660 Wildlife Resources Agency	Rulemaking Hearing Rules	Amendment	<i>Chapter 1660-1-27</i> <i>Rules and Regulations for Hunter Education Centers and Firing Ranges</i> 1660-1-27-.04 Stones River Hunter Education Center	Sheryl Holtam TWRA P.O. Box 40747 Nashville TN 37204 (615) 781-6606	Nov 2, 2005

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SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-47	Aug 23, 2005	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-1-50</i> <i>Financial Eligibility Requirements</i> <i>Families First Program</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson Citizens Plaza Bldg 15th Fl 400 Deaderick St Nashville TN 37248-0006 (615) 313-4731	Nov 6, 2005
08-57	Aug 29, 2005	0400 Environment and Conservation Petroleum Underground Storage Tank Division	Public Necessity Rules	Amendments	<i>Chapter 1200-1-15</i> <i>Underground Storage Tank Program</i> 1200-1-15-.01 Program Scope and Minimum Requirements for Tanks		Aug 29, 2005 through Feb 10, 2006
08-63	Aug 31, 2005	0680 Licensing Contractors	Rulemaking Hearing Rules	New Rules	<i>Chapter 0680-4</i> <i>Licensing</i> 0680-4-.01 Definitions 0680-4-.02 Application and Examination 0680-4-.03 Fees 0680-4-.04 Change of Address 0680-4-.05 License Renewal 0680-4-.06 Disciplinary Action and Civil Penalties	Alison G. Cleaves Commerce and Insurance Office of Legal Counsel 500 James Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-0915	Nov 14, 2005
08-64	Aug 30, 2005	0400 Environment and Conservation Air Pollution	Rulemaking Hearing Rules		<i>Chapter 1200-3-27</i> <i>Nitrogen Oxides</i> 1200-3-27-.09 Compliance Plans for NOx Emissions from Stationary Internal Combustion (IC) Engines	Mr. Martin Smith Division of Air Pollution Control 9th Floor L & C Annex 401 Church Street Nashville TN 37243-1531 (615) 532-0569	Nov 14, 2005

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SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-67	Aug 31, 2005	0780 Commerce and Insurance Insurance Division	Rulemaking Hearing Rule	Amendments	<i>Chapter 0780-1-54</i> <i>Self-Insured Workers' Compensation Pools</i> 0780-1-54-.01 Purpose and Scope 0780-1-54-.02 Definitions 0780-1-54-.03 Certificate of Authority Required 0780-1-54-.04 Application for a Certificate of Authority 0780-1-54-.05 Continued Reporting Requirements 0780-1-54-.06 Board of Trustees 0780-1-54-.07 Administrators 0780-1-54-.08 Members of the Pool 0780-1-54-.09 Financial Statements and Other Reports 0780-1-54-.10 Rates and Rate Reporting 0780-1-54-.11 Premiums and Reserves 0780-1-54-.12 Taxes and Delinquencies 0780-1-54-.13 Investments 0780-1-54-.14 Information to Members 0780-1-54-.15 Refunds and Dividends 0780-1-54-.16 Sponsoring Associations 0780-1-54-.17 Insurance Producer License Required 0780-1-54-.18 Misrepresentation Prohibited 0780-1-54-.19 Service of Process 0780-1-54-.21 Cease and Desist Orders 0780-1-54-.22 Suspension or Revocation of Certificate of Authority 0780-1-54-.23 Termination of Certificate of Authority 0780-1-54-.24 Assessments 0780-1-54-.25 Applicability of the Insurers Rehabilitation and Liquidation Act	John F. Morris Commerce and Insurance 500 James Robertson Pkwy 5th Fl Davy Crockett Twr Nashville TN 37243 615-741-2199	Nov 14, 2005

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
06-68	Aug 31, 2005	0720 Health Services and Development Agency	Rulemaking Hearing Rule	New Rules	<p><i>Chapter 0720-8</i> <i>Conduct of Business</i> 0720-8-.01 Communications 0720-8-.02 Conflicts of Interest 0720-8-.03 Staff and Agency Determinations 0720-8-.04 Access to Agency Records 0720-8-.05 Conducting Agency Meetings 0720-8-.06 Beginning of Review Cycles</p> <p><i>Chapter 0720-9</i> <i>Definitions</i> 0720-9-.01 Definitions</p> <p><i>Chapter 0720-10</i> <i>Certificate of Need Program – Scope and Procedures</i> 0720-10-.01 Private Professional Practice Exemption 0720-10-.02 Activities Requiring Notification - Miscellaneous Provisions 0720-10-.03 Standard Procedures for Certificate of Need 0720-10-.04 Emergency Certificate of Need 0720-10-.05 Consent Calendar 0720-10-.06 Expiration Revocation and Modification of Issued Certificates</p> <p><i>Chapter 0720-11</i> <i>Certificate of Need Program – General Criteria</i> 0720-11-.01 General Criteria for Certificate of Need</p> <p><i>Chapter 0720-12</i> <i>Certificate of Need Program – Application, Disclosure of Information and Reporting Requirements</i> 0720-12-.01 Standard Application 0720-12-.02 Report of Bed Increases Not Requiring a Certificate of Need 0720-12-.03 Replacement or Upgrade of Major Medical Equipment 0720-12-.04 Report of Change of Ownership of Licensed Institutions 0720-12-.05 Registration of Equipment</p> <p><i>Chapter 0720-13</i> <i>Rules of Procedure for Hearing Contested Cases</i> 0720-13-.01 General Procedures for Contested Cases</p>		

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	CONTROL NUMBER DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
08-68 cont.				Repeals	0720-13-.02 Contested Cases Before Administrative Judges Sitting Alone 0720-13-.03 Agency Review of Initial Orders 0720-13-.04 Declaratory Orders Chapters 0720-1 Conduct of Business is repealed. 0720-2 Definitions is repealed. 0720-3 Certificate of Need Program – Scope and Procedures is repealed. 0720-4 Certificate of Need Program – General Criteria is repealed. 0720-5 Certificate of Need Program – Application Disclosure of Information and Reporting Requirements is Repealed. 0720-6 Rules of Procedure for Hearing Contested Cases is repealed. 0720-7 Exemption from Certificate of Need Requirements for Ambulatory Surgical Treatment Centers is repealed.	James B. Christoffersen Health Services and Development Agency Andrew Jackson Bldg Suite 850 500 Deaderick St Nashville TN 37243 (615) 741-2364	Nov 14, 2005

ANNOUNCEMENTS

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

NOTICE OF WITHDRAWAL OF RULES

The Tennessee Medical Laboratory Board hereby gives notice of withdrawal of amendment to paragraph (5) of rule 1200-6-1-.13, filed with the Department of State on the 8th day of August, 2005 to have become effective on the 22nd day of October, 2005.

The notice of withdrawal of rules was properly filed in the Department of State on the 23rd of August, 2005.
(08-27)

ANNOUNCEMENTS

TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Visit the Tennessee Health Services and Development Agency web site at: <http://www.state.tn.us/hsda/> for the latest Notice of Beginning of Review Cycle.

ANNOUNCEMENTS

THE DEPARTMENT OF LABOR AND AND WORKFORCE DEVELOPMENT - 0800

PETITIONS FOR RULEMAKING HEARING

The Department of Labor filed proposed rules and amendments for chapters 0800-2-5 Benefit Review Process, 0800-2-13 Penalty Program, 0800-2-16 Deposition Fee, 0800-2-20 Medical Impairment Rating Program. These appeared in the July 2005 Tennessee Administrative Register and were scheduled to become effective on the 28th day of October, 2005.

The afore mentioned proposed rules and amendments have been petitioned by the following eligible organizations:

Associated Builders and Contractors, Inc.
1604 Elm Hill Pike
Nashville TN 37210
615-399-8323

Tennessee Trial Lawyers Association
1903 Division Street
Nashville TN 37203
615-329-8131

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TENNESSEE REGULATORY AUTHORITY - 1220

**PETITION FOR DECLARATORY RULING
NOTICE OF HEARING**

Pursuant to Tennessee Code Annotated Section 4-5-224, the Tennessee Regulatory Authority gives the following notice of hearing on a petition for declaratory order:

Docket No. 05-00152

1. Petitioner's Name: United Telephone-Southeast, Inc.
2. Petitioner's Attorney: Edward Phillips, Esq.
Address: 14111 Capital Blvd.
Wake Forest, NC 27587-5900
Telephone Number: (919) 554-7870

3. Organization, if any, that the Petitioner represents:

Organization Name: N/A

Address: N/A

4. Provide a statement of the facts that led to the filing of the petition.

According to the petition, United Telephone-Southeast, Inc. and The Information Bureau, Inc. are in the midst of negotiating a new interconnection agreement. Pursuant to 47 U.S.C. Section 252(e), any interconnection agreement adopted by negotiation must be submitted for approval by the Tennessee Regulatory Authority. Under the terms of the earlier interconnection agreement that expired on October 31, 2004, United Telephone-Southeast, Inc. provided The Information Bureau, Inc. a combination of an unbundled DS1 Loop and unbundled DS1 switching for the enterprise market. United Telephone-Southeast, Inc. states that the negotiations have halted due to The Information Bureau, Inc.'s refusal to accept the Federal Communications Commission's decision that DS1 switching is no longer available at Total Element Long Run Incremental Cost (TELRIC) pricing. The parties are presently operating under the terms of the expired agreement on a month-to-month basis.

The Information Bureau, Inc. filed a letter with the Tennessee Regulatory Authority requesting that United Telephone-Southeast, Inc. be required to continue to honor its previous contract with The Information Bureau, Inc. for primary rate interface (PRI) lines until there is a final ruling from the federal courts and the Federal Communications Commission regarding unbundled network elements-platform (UNE-P) services. The Information Bureau Inc.'s request, filed in Docket No. 05-00156, has been consolidated with the petition for declaratory ruling.

5. Summary of Relief Requested:

The Petitioner asks for a declaratory order from the Tennessee Regulatory Authority that paragraph 451 and 47 C.F.R. Section 51.319(d)(3), as set forth in the Federal Communications Commission's Triennial Review Order issued on August 21, 2003, eliminated the requirement for Incumbent Local Exchange Carriers to provide DS1 switching at Total Element Long Run

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Incremental Cost (TELRIC) based on unbundled network element (UNE) rates and may price those elements at market-based prices.

6. Order and rule that the agency is called upon to interpret or upon which it is to rule:

Paragraph 451 of the Triennial Review Order (*In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, (*Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*) 18 FCC Rcd. 16978 (August 21, 2003), corrected by *Errata*, 18 FCC Rcd. 19020 (2003), vacated and remanded in part, affirmed in part, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II") cert. denied, 125 S.Ct. 313, 316, 345 (2004)).

47 C.F.R. Section 51.319(d)(3).

A contested case hearing has been scheduled for October 17, 2005, 1:00 p.m., Ground Floor Hearing Room, 460 James Robertson Parkway, Nashville, TN 37243-0505.

If you have any questions, you may contact the Petitioner's attorney, Edward Phillips of United Telephone-Southeast, Inc., at the address and telephone number listed at the beginning of this notice.

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 23rd day of August, 2005. (08-49)

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

FOR TEXT OF EMERGENCY RULE SEE T.A.R. CITED

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency rules promulgated in response to the threat of Vesicular Stomatitis introduction into the State of Tennessee, Chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, 8 T.A.R., Volume 31, Number 8, (August 2005) Filed July 25, 2005; effective through January 6, 2006. (07-25)

- 1240 - Department of Commerce and Insurance - Division of Insurance - Emergency Rules promulgated with respect to proper standards for health insurance issuers in paying insurance producers that sell contracts of health insurance coverage, Chapter 0780-1-88 TN Health Insurance Portability, Availability and Renewability Regulations - 8 T.A.R., Volume 31, Number 8, (August 2005) Filed July 26, 2005; effective through January 7, 2006. (07-32)

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**DEPARTMENT OF STATE - 1360
DIVISION OF CHARITABLE SOLICITATIONS
CHARITABLE GAMING SECTION**

**CHAPTER 1360-3-2
PROCEDURES FOR OPERATING CHARITABLE GAMING EVENTS**

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to TCA 4-5-208, I am promulgating emergency rules covering procedures for filing applications, amendments and financial accounting reports for organizations exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (IRC) who have been authorized by the Tennessee General Assembly to operate charitable gaming events. The emergency rules are necessary because of TCA § 3-17-101 et seq.

I have made a finding that there is an emergency creating a danger to the public welfare in that there will not be a set of procedures explaining the procedures for filing initial applications, filing amendments, obtaining criminal history record checks and filing accounting reports, until permanent rules are promulgated by the Director of Charitable Solicitations as required by TCA § 3-17-115(b). Therefore, unless emergency rules establishing procedures are adopted, there would be no state regulation regarding the operation of charitable gaming events. The lack of such guidelines would be injurious to the public safety in Tennessee.

For copies of the entire text of the proposed rules, contact Barbara Toms, Director, Division of Charitable Solicitations, Department of State, 8th Floor, William R. Snodgrass Bldg., Nashville, TN 37243, 615-741-2555.

Barbara Toms
Director of Charitable Solicitations
State of Tennessee

EMERGENCY RULES

**EMERGENCY RULES
OF THE
DEPARTMENT OF STATE
DIVISION OF CHARITABLE SOLICITATION
CHARITABLE GAMING SECTION**

**CHAPTER 1360-3-2
PROCEDURES FOR OPERATING CHARITABLE GAMING EVENTS**

NEW RULES

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1360-3-2-.01 DEFINITIONS.

- (1) "Amended application"- means those items of information submitted to the secretary for the purpose of revising, correcting, adding to, or otherwise supplementing an initial application in order to meet the requirements of the Tennessee Charitable Gaming Implementation Law.
- (2) "Bona fide director, officer or employee"- For the purposes of eligibility to participate in the management or operation of an annual gaming event, a person is a bona fide director, officer or employee of the authorized organization only when he or she:
 - (a) Has become a director, officer or employee prior to the commencement of the annual gaming event and such position does not depend upon, nor is it in any way related to, the payment of consideration to participate in any gaming activity; and;
 - (b) Has held such status in the authorized organization for a period of not less than three (3) consecutive months prior to the subject annual gaming event.
- (3) "Conformed copy". A conformed copy is a copy that agrees with the original and all amendments to it. If the original document required a signature, the copy shall either be signed by a principal officer or, if not signed, be accompanied by a written declaration signed by an authorized officer of the organization. With either option, the officer must certify that the document is a complete and accurate copy of the original. A certificate of incorporation shall be date stamped and show approval by an appropriate state official.

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- (4) "Compensation" for purposes of TCA § 3-17-103(a)5(A)(i)(b) means anything of value received as a result of work performed on behalf of a §501(c)(3) organization, including, but not limited to, tips, reductions, and waivers of fees.
- (5) "Directors or officers of the organization" for purposes of TCA §3-17-104 (a)(12) means the entire slate of members of the governing body of an organization. An executive committee or subcommittee of a governing board shall not qualify as the directors or officers of the organization.
- (6) "Fair Market Value" means a price at which an unrelated buyer and seller would agree to a transaction; a valuation that is reasonable to all parties involved in a transaction, none of which are under a compulsion to buy or sell while having a reasonable knowledge of the relevant facts.
- (7) "Games of chance associated with casinos" includes casino night parties (also known as "Vegas Nights", "Las Vegas Nights", "Monte Carlo Nights", casino parties) to raise money for a specific charitable cause by having each participant purchase a ticket for the event. Each participant receives a specific amount of play money that can be used to engage in various casino-type games (such as blackjack, roulette, baccarat, craps, poker, wheel of fortune, etc.) in an attempt to accumulate the largest amount of gaming chips. At the end of the event, the participant who managed to win the most chips receives some kind of prize.
- (8) "Initial application"- means the first application submitted by an organization seeking approval to hold an annual gaming event.
- (9) "Notice", unless otherwise indicated, shall mean a written communication and forwarded by U.S. mail, certified return receipt requested.
- (10) "Operate"- means
 - (a) To run or control, directly or indirectly, the functioning of an annual gaming event;
 - (b) To bring about a desired or proper effect including, but not limited to, planning, promoting, advertising, marketing, authorizing or entering into agreements, purchasing supplies, telephone services, gaming records or devices, buying or leasing services, facilities or locations, printing of materials and tickets, shares, chances or similar records and the transporting of such records and other devices;
 - (c) To conduct the affairs of an event including, but not limited to, on-site or off-site management;
 - (d) To complete the necessary federal tax forms and pay the regular gaming or backup withholding taxes.
- (11) "Organizational document" shall mean the record that establishes the organization as a legal entity and shall include, but not be limited to, a certified copy of the Articles of Incorporation (or charter), constitution, or trust agreement.
- (12) "Physical Presence" means an organization has a physical office established and located within the state of Tennessee where regular business within the organization's stated mission is transacted. The existence of a post office mailing address or drop box location is not sufficient to create a physical presence.
- (13) "Pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols which must be exposed by the player

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to determine wins or losses. Pull tabs may also be known as break-opens, hard cards, banded tickets, jar tickets, pickle cards, Lucky Seven Cards, Nevada Club tickets, instant bingo cards.

- (14) "Resubmission of application" means to re-file the entire application including all attachments and any necessary information which was omitted from the initial application.

Authority: TCA §3-17-115(a) and (b).

1360-3-2-.02 APPLICATION SLIDING FEE SCALE.

An application to hold an annual gaming event shall be submitted with the appropriate filing fee according to the organization's gross revenue for the annual event based on the following scale:

Event Gross Revenue	Filing Fee
\$0.00 to \$5,000.00	\$150.00
\$5001.00 to \$10,000.00	\$300.00
\$10,000.00 to \$20,000.00	\$450.00
over \$20,001.00	\$600.00

Authority: TCA § 3-17-104(c)(2).

1360-3-2-.03 APPLICATIONS FOR AUTHORIZATION TO HOLD AN ANNUAL GAMING EVENT- TIME TO SUBMIT APPLICATIONS.

- (1) An application for authorization to hold an annual gaming event shall be submitted beginning July 1 and ending October 31st of each year.
- (2) When the first or last day to file an application is a non-business day (e.g., weekend, holiday), the first or last day to file is the first business day immediately following the date established by statute. (Example: July 1, the first day to file an application, is a Sunday. The first filing day is the first business day following Sunday.)
- (3) The date and time stamp endorsement of the Secretary shall determine whether an amendment is timely filed. An application submitted beyond the time set forth in the Act shall be automatically rejected.
- (4) Incomplete application. An application that does not comply with the provisions of the Act shall be rejected. The Secretary shall notify the applicant of the reasons for rejection of the application. Corrections to a deficient application shall be submitted no later than 12:00 noon, February 1 in the year subsequent to the filing of the application. If this date falls on a non-business day, the last day to file an amendment shall be 12:00 noon the last business day preceding the deadline date.

Authority: TCA § 3-17-115(a) and (b).

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1360-3-2-.04 PROOF OF ACTIVE AND CONTINUOUS EXISTENCE.

- (1) In addition to the requirements set out in Public Chapter 476, as amended, §3-17-101 et. seq., an organization may submit as proof of its continuous and active existence, including, but not limited to, the following types of information:
 - (a) A copy of the last five (5) annual Forms 990, 990-EZ, or 990-PF filed with the Internal Revenue Service for the five (5) year period immediately preceding the date of application;
 - (b) If the organization is a corporation, a copy of the last five (5) annual reports filed with the Secretary's Business Services Division for the five (5) year period immediately preceding the date of application;
 - (c) Copies of the organization's written authorization to conduct charitable solicitation for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application.
 - (d) Copies of published annual reports of the organization for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application;
 - (e) Copies of audited financial statements prepared by an independent certified public accountant and which covers the five (5) year period immediately preceding the date of application;
 - (f) Copies of minutes of annual meetings duly recorded and attested to by the secretary of the organization and which covers the five (5) year period immediately preceding the date of application;
 - (g) Copies of grant approval and continuation notices received by the organization and which covers the five (5) year period immediately preceding the date of application; and/or
 - (h) Copies of printed advertisements for the organization showing the date of publication of the advertisement and which covers the five (5) year period immediately preceding the date of application.
- (2) An organization may submit copies of documents from two or more types as indicated above, so long as documents cover the five (5) year period immediately preceding the date of application. (Example: Organized in 1995, organization was not required to file IRS Form 990 until Year 2001. An annual event application is filed July 1, 2004. It may submit Forms 990 for years 2001, 2002, 2003 and annual reports filed with Business Services Division for years 1999 and 2000.
- (3) Acceptable documents must be authentic, genuine or bona fide documents. Copies of documents must be conformed copies.

Authority: TCA § 3-17-104(a)(6); TCA § 3-17-115(b).

1360-3-2-.05 PROOF OF §501(C)(3) TAX EXEMPT STATUS AND PURPOSE(S).

- (1) Chapters or Affiliates. An organization which is a chapter or affiliate operating under a Section 501(c)(3) group exemption must have its own federal employer identification number and shall submit the following documents in support of its tax exempt status:

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- (a) The Letter of Determination of the parent organization assigned by the Internal Revenue Service which includes the group's 4-digit tax exemption number;
 - (b) A list of all chapters and affiliates under the group exemption as submitted by the parent organization to the Internal Revenue Service, including the federal tax identification number and physical address of each chapter or affiliate;
 - (c) A written statement from the parent organization that the applicant is in good standing with the parent organization;
 - (d) A properly executed Affidavit of the organization's 501(c)(3) status [Secretary of State Form SS-6060]; and,
 - (e) A copy of the organizational document.
- (2) An organization recognized as exempt from federal income taxation by the Internal Revenue Service prior to October 9, 1969, that would otherwise qualify as a 501(c)(3) organization shall, in addition to the requirements of TCA §3-17-103, submit the following documents in lieu of IRS form 1023 in support of its tax exempt status/purpose(s):
- (a) A detailed narrative of all of the activities of the organization. List each activity in order of importance based on the relative time and resources devoted to the activity. Indicate the percentage of time for each activity; and
 - (b) A Statement of Revenue and Expenses for the five (5) years immediately preceding the period under consideration.)
- (3) For purposes of clarification, these regulations adopt the following language of the Internal Revenue Service: The exempt purposes of §501 (c)(3) organizations are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency.
- (4) To be tax-exempt as an organization described in IRC Section 501(c)(3), an organization must be organized and operated exclusively for one or more of the purposes set forth in this code section and none of the earnings of the organization may benefit or provide any advantage to any private shareholder or individual.

Authority: TCA § 3-17-115(a) and (b).

1360-3-2-.06 DESCRIPTION OF THE GAMES.

Severe penalties may be imposed for violation of the Act including the playing of an unauthorized type of game. Therefore it is essential that any chosen game of chance fall within the permissive language of the Act. Every application seeking authorization to hold an annual gaming event must provide a written description of a "Rules of Play". Rules of Play means a detailed written explanation and description of the game in the nature of a description associated with a board

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game. Relevant information should include the details of what the game is, how it is operated by the organization and how it is played by a contestant or player.

Authority: TCA § 3-17-115(a) and (b).

1360-3-2-.07 PROHIBITED/ALLOWED TYPES OF GAMES.

- (1) The playing of bingo or a similar game under another name (e.g. "Lotteria") at an annual gaming event is expressly prohibited. The following types of games are also prohibited during the conduct of any annual gaming event:
 - Video lottery
 - Slot machines
 - Roulette wheels
 - Blackjack
 - Other games of chance associated with casinos
 - Craps
 - Pull tabs
 - Punchboards
 - Instant bingo
 - Instant and on-line lottery games of a type operated by the Tennessee education lottery corporation

- (2) The following list provides some guidance as to the types of games which shall be allowed. This list is not intended to include every type of authorized game.
 - Raffles
 - Reverse Raffles
 - Lotteries
 - Sweepstakes
 - Duck Races
 - Cakewalks
 - Cake wheels

- (3) All organizations must comply with the provisions of the Act, including an organization that intends to conduct a cash or prize giveaway and give some, but not all, persons wishing to participate an opportunity to do so without requiring the payment of any money or other consideration, the making of a donation, or the purchasing of a product or service.

Authority: TCA § 3-17-115(a) and (b).

1360-3-2-.08 ACTION BY BOARD OF DIRECTORS.

- (1) Governing body (e.g., board of directors, trustees). The organization must disclose in the annual event application the total number of members of its governing body for the period in question and the name and address of each member.

- (2) Meeting minutes. The governing body shall meet, either by regular or special meeting, if it intends to operate an annual gaming event. Unless otherwise provided by its by-laws, the meeting may be conducted through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. Action taken by consent without a meeting (e.g., consent communicated by e-mail or facsimile transmission) is not authorized by the Act.

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- (3) The minutes shall reflect an affirmative vote by a majority of all current members of the governing body and must be signed and attested by the board secretary.
- (4) Affidavit in lieu of minutes. In lieu of regular or special minutes of the board of directors, an organization shall submit an affidavit (Secretary of State Form SS-6062) indicating the date of the meeting, the total number of directors or trustees present, and the number casting an affirmative vote to operate a gaming event. The affidavit must bear the notarized signature of all members of the governing body, whether or not a member attended the meeting or voted in the affirmative to operate an event.

Authority: TCA § 3-17-115(a) and (b).

1360-3-2-.09 AMENDMENT PROCESS- CONFLICTING LOCATIONS, OTHER AMENDMENTS.

- (1) In addition to the requirements §§3-17-104 and 3-17-105(b), all organizations must provide either an e-mail address or fax number in order to facilitate speedy communication. Organizations must respond to requests from the secretary within 10 days but in no event shall a response be received later than 24 hours prior to any filing deadline.
- (2) An amendment form (SOS Form No. SS-6065) shall be used to notify the secretary of a change of location, or any other amendment. An organization may fax a completed amendment form to the Charitable Gaming Section at 615-253-5173. Forms may be obtained from the Charitable Gaming Section and are also available on the secretary of state's website: <http://www.state.tennessee.gov/sos/charity/gaming.htm>.
- (3) Amendments shall be accepted for filing until 12:00 Noon, February 1 of each year subsequent to the filing of the application. The date and time stamp endorsement of the Secretary shall determine whether an amendment is timely filed. In accordance with the provisions of §3-17-105(d)(2)(A), the secretary shall have no authority to accept, and shall not accept, an annual event application, or an amendment thereto, submitted after the application deadline has passed for the appropriate annual event period.
- (4) Annual Event Location Changes:
 - (a) Only two annual events can be held at any location during a calendar month. Only one organization can use a location that has previously been approved for another organization during that month. Example: ABC organization has an event at 1 Highway, Anytown, Tennessee on July 4, 2004. A second organization has also scheduled an annual event in July at that location. No other organization can use the same location for its event during the month of July, 2004, even if the event is on a different date.
 - (b) An address which has multiple suites or units at the same location shall be counted as one location for purposes of choosing an annual gaming event location. If it becomes necessary for an organization to change the date of its annual gaming event due to a conflict or unavailability of a chosen location, an amendment form (SOS Form No. SS-6065) must be filed with the Secretary specifying the location which caused the conflict and the full address/location of the new proposed location which has been chosen. Amendments shall not be accepted for filing after the amendment deadline.
- (5) Annual Event Date Changes:

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- (a) **Conflicting Dates-** Only two organizations shall be allowed to hold an annual gaming event at a facility during any calendar month. Annual gaming event dates will be approved on a first-come, first-serve basis as determined by the date stamp on the application. If the secretary receives an application which designates the same location for an event which has already been approved for two other organizations, notice will be provided to the organization of the conflict. In order to expedite the notice process, the secretary will provide notice by e-mail or facsimile message. If an organization must change its annual gaming event date in order to correct or avoid a conflict with another organization, an amendment form must be filed with the Secretary specifying the event date which caused the conflict, the full address/location of the proposed event and the new date which has been chosen. Amendments shall not be accepted for filing after the application deadline. Because amendments cannot be accepted after the application deadline, an organization should plan carefully and file its application well in advance of the October 31st deadline for receipt of applications and the February 1st deadline for receipt of amendments so that a change of event date will not be barred by the filing deadline.
- (b) **Changes of Event Date within Fourteen (14) days of Event-** Sometimes it may become necessary for an organization to change the date of its annual gaming event. Public Chapter 476, as amended, § 3-17-102 (d)(1)(A) allows an organization to hold an event within fourteen (14) days of the date listed in its application. All event date amendments must be filed with the office of the Secretary of State including changes for an event date scheduled within 14 days of the original annual event date. In addition, notice of event date changes must be filed with the local law enforcement officer. In accordance with the provisions of §3-17-102(a)(1), except as indicated above, the Secretary shall have no authority to accept, and shall not accept, an annual event application, or an amendment thereto, submitted after the application deadline has passed for the appropriate annual event period. Because amendments cannot be accepted after the application deadline, an organization should plan carefully and file its application well in advance of the October 31st deadline for receipt of applications and the February 1st deadline for amendments so that a change of event date will not be barred by the filing deadline.
- (c) The fourteen (14) calendar day period prescribed by §3-17-102(d)(1)(A), within which an organization must hold an annual gaming event, may be counted beginning fourteen days prior to the event date listed in the annual event application or fourteen days after the event date listed in the annual event application.

Authority: TCA § 3-17-105(b); TCA § 3-17-115(a) and (b).

1360-3-2-.10 CONDUCT OF THE GAMES.

- (1) **Advertising.** Nothing in the act shall be construed as prohibiting an organization from accepting donations of advertising services. For purposes of this part, however, granting permission to post flyers for an event on the premises of a vendor shall not be construed as donating advertising services.
- (2) **Ticket Sales and Sale of Similar Records.** Persons under the age of eighteen (18) are prohibited from selling or purchasing tickets and similar records for charitable gaming activities.
- (3) **Officer(s) Responsible for Gross Receipts.** – The authorized organization shall duly designate an officer/officers of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all gaming event receipts. Such officer(s) name shall appear on the list required under Public Chapter 476, §3-17-104 (a) (20) and (21).

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- (4) **Payment of Workers Prohibited.** No commission, salary, compensation, reward, recompense, reimbursement of expenses, or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any annual gaming event except as hereinafter provided for bookkeepers or accountants who assist by rendering their professional services. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of an annual gaming event either directly or indirectly.
- (5) **Regular Salary or Wages for Employee not "Compensation".** The regular salary or wages of a regular and full time employee, or a regular but part-time employee shall not be considered to be "compensation" within the meaning of the Act when it is performed by a person who has been regularly employed by the authorized organization and when all of the following conditions are met:
 - (a) The position held by the employee has been created for the purposes unrelated to the conduct of the annual gaming event and the required performance of duties is generally unrelated to the annual gaming event. The employee's contribution to an annual gaming event must be an incidental part of his or her total duties consisting of less than 10% of the total time worked for the organization; and
 - (b) The employee is paid on a recurring basis at a regular and established rate of pay throughout the calendar year, unrelated to the income produced by the annual gaming event; and
 - (c) The employee does not operate any game of chance at any function conducted by the organization but confines his or her services in connection with the annual gaming event to assisting the organization's other employees with the overall planning and organization of the event with supervision of the supporting services for the event.

Authority: TCA § 3-17-115(a) and (b).

1360-3-2-.11 CRIMINAL BACKGROUND CHECKS.

- (1) **Effective Date.** Beginning July 1, 2005, criminal background checks conducted by the TBI may be required by the secretary.
- (2) **Persons Subject to Criminal Background Checks.** Fingerprint-based criminal background checks may be required of officers, directors, trustees, principal salaried executive staff officers and any person operating an annual event on behalf of a 501(c)(3) organization. Persons who do not receive any compensation for their duties associated with the 501(c)(3) organization shall not be subject to criminal background checks.
- (3) **Criteria for requiring Criminal Background Checks.** Upon a determination by the secretary that a criminal background check is required of a person in connection with an annual gaming event held by a 501 (c) (3) organization, the application of such organization shall not be considered until such background check has been completed and the results of the background check are received in the office of the secretary of state. In the event that information is revealed in the background check which would be a violation of a provision of the Act, the secretary shall give notice to the affected organization and allow them an opportunity to cure the disqualifying situation by disassociating such person or persons from taking any action on behalf of such organization. The organization shall submit to the secretary, an affidavit, signed by the chief operating officer and the treasurer of the organization, setting forth what action has been undertaken by the organization to disassociate the individual/ individuals.

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- (4) Procedure for Obtaining Criminal Background Checks. Upon notification by the secretary that a criminal background check is required, the person notified shall take immediate steps to secure the background check. Persons who receive a request from the secretary to submit to a criminal background check shall contact the then current state of Tennessee fingerprinting service to obtain information on the proper location and procedure for having the background check run. The current vendor for the state of Tennessee is Sylvan Identix Fingerprinting Centers. The toll free number is 1-866-226-2937. Persons must provide identifying information, the reason for being printed and name of the "Division of Charitable Solicitations, Charitable Gaming Section" as the entity for whom the prints are requested. Background checks will include data from a dual TBI & FBI search. At the time of the printing, the person must provide identification to verify his/her identity. A driver's license, passport, military ID or similar identification should be provided. The applicant shall be responsible for paying all costs associated with obtaining a criminal history background check. The results of the background search will be provided directly to the Secretary of State's Division of Charitable Solicitations, Charitable Gaming Section. Results of background checks may be challenged by contacting the TBI. A form is available for download from the TBI web site at www.tbi.state.tn.us or by contacting the TBI directly.
- (5) Information from Law Enforcement Agency. The secretary may require a criminal background check on any person based upon information received from a local, state or federal law enforcement agency indicating a violation of the law involving theft, misappropriation of funds, or any matter which would impact the legitimate operation of an annual gaming event. For purposes of this provision, law enforcement agency shall include the Internal Revenue Service.
- (6) Denial of Application to Conduct Annual Gaming Event. The secretary may deny an application to operate an annual gaming event based upon the results of a criminal background check. In addition, the secretary may impose a civil penalty if the background check shows a violation of the Charitable Gaming Implementation Law. Penalties shall be determined based upon the rules for disqualification located below at section 1360-3-2-.14.

Authority: TCA § 3-17-114; TCA § 3-17-115(a) and (b).

1360-3-2-.12 ACCOUNTING PROCEDURES.

- (1) Records:
 - (a) Record Keeping. Accurate records shall be kept by each authorized organization in a manner which shows in detail the amount and source of gross receipts, the expenses incurred and the name and address of each person receiving a prize over fifty (\$50.00) dollars and the value of the prize.
 - (b) Access to Records. The Secretary of State, the Attorney General and Reporter and the Tennessee Bureau of Investigation or their authorized agents or representatives shall at all times have access to all books and records of any authorized organization for the purpose of examining and checking them.
 - (c) Period of Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of an annual gaming event shall be retained and available for inspection by the secretary of state and the Tennessee Bureau of Investigation or their authorized agents or representatives for a period of at least five (5) years after the date of the annual gaming event to which they relate.

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- (d) **Bank Accounts.** Proceeds from annual gaming events shall be kept in a separate annual events gaming account which shall be in the form of a checking account. All receipts from the annual gaming event less the amount awarded as cash prizes for the event shall be deposited to this special account no later than the next business day following the date of the annual gaming event. Gaming proceeds from the sale of tickets, shares, chances, or similar records shall be deposited the next business day when ever possible but in no event later than seventy two (72) hours after the conclusion of the annual gaming event. All prizes, whether paid by cash or check, shall be paid from this account. Money shall be withdrawn from this special account for only the following purposes:
1. Payment of expenses;
 2. Disbursement from Net Proceeds for a lawful purpose; and,
 3. The commingling of any funds derived from the operation of an annual gaming event with any other funds of the authorized organization is prohibited.
- (e) **Payment of Expenses.** Money for reasonable and necessary expenses may be paid from gross receipts only by checks having preprinted consecutive numbers drawn on the organization's account. Said checks must be made payable to the specific person or corporation providing the goods or rendering the service which gives rise to the expense item and at no time may checks be payable to "cash" or "bearer". Only those expenses which are reasonable and necessary and ordinarily incidental to the conduct of the annual gaming event may be paid from the gross receipts or otherwise.
- (f) **Donated Prizes, Goods, or Services.** The organization shall disclose the fair market value of all prizes, good and services.

Authority: TCA § 3-17-115(a) and (b).

1360-3-2-.13 PROOF THAT NET EVENT PROCEEDS WERE USED FOR CHARITABLE PURPOSE.

- (1) An organization applying to hold an annual gaming event must state its charitable purpose. An organization's charitable purpose shall not conflict with the purpose approved by the Internal Revenue Service in response to the organization's application for recognition of exempt status. An organization may use a copy of its IRS form 1023 application, Part II. Activities and Operational Information to prove its charitable purpose. A tax exempt charitable organization which was created prior to October 9, 1969 may submit a copy of documents listed in 1360-3-2-.04(1) above.
- (2) The Charitable Gaming Section will look first to the Charitable Gaming Financial Accounting Report form (SOS Form SS-6066) to determine what expenditures the organization considered as being used for its charitable purpose.
- (3) Cancelled checks which state the purpose of the payment and which identify and are endorsed by the payee shall be one form of acceptable documentation.
- (4) A copy of the organization's balance sheets and monthly statements should be provided to substantiate that funds have been earmarked.

Authority: TCA § 3-17-115(a) and (b).

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1360-3-2-.14 DISQUALIFICATIONS/CIVIL PENALTIES.

- (1) Any violation of the Tennessee Charitable Gaming Implementation Law shall be a basis for disqualification or the imposition of civil penalties. Civil penalties may be assessed for the violation of either civil or criminal provisions of the Act.
- (2) An organization that loses its tax exempt status shall be ineligible to hold an annual gaming event. The years for which the tax exempt status was not in effect shall not be countable as part of the period of active and continuous operation. If the Internal Revenue Service revokes an organization's tax exempt status and the revocation is made retroactive, the period of retroactivity will not be countable as part of the period of active and continuous operation.
- (3) Organizations which are tax exempt under a provision of the Internal Revenue Code other than section (501)(c)(3) are not eligible to conduct annual gaming events.
- (4) A period of disqualification shall run from the date of application, the date of discovery of the violation or the date of imposition of the disqualification, whichever is later. The table below summarizes possible violations of the Act and the resulting period of disqualification or penalty.

NATURE OF DISQUALIFICATION	PERIOD OF DISQUALIFICATION
1. Application was not submitted by April 20, 2004 and organization operated annual gaming event. §3-17-103	1. Twelve (12) month Annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
2. Organization has not been in continuous existence for 5 years prior to the event date. §3-17-101 and 103	2. Disqualified until organization has been in existence for five years.
3. Organization is not a qualified 501(c)(3) organization. §3-17-103	3. Until organization proves 501 (c)(3) status. Note: No applications or amendments can be accepted after application period has ended.
4. Organization's 501(c)(3) status was revoked and has not been reinstated by IRS§3-17-102.	4. Until organization provides proof of reinstatement of 501 (c)(3) status.
5. Organization conducted more than (1) one annual gaming event during annual gaming event period (July 1-June 30). §3-17-103(a)(3)(A)	5. Permanent Disqualification. Secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
6. Organization operated annual gaming event at more than one location during annual gaming event period. §3-17-103(a)(3)(B)(i)	6. Permanent Disqualification. Secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).

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NATURE OF DISQUALIFICATION	PERIOD OF DISQUALIFICATION
7. Organization operated annual gaming event in county where it did not have a physical presence. §3-17-103(a)(3)(B)(i)	7. Permanent Disqualification. Secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
8. Organization failed to timely file an event application and organization operated annual gaming event. §3-17-103(a)(1)(A)(B) and (C) and §3-17-104(a)	8. Twelve (12) month Annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
9. Organization previously withdrew application to hold an annual gaming event and organization operated annual gaming event. §3-17-105(e)	9. Twelve (12) month Annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
10. Organization cancelled annual gaming event and organization operated annual gaming event. §3-17-106(f)(1)	10. Twelve (12) month Annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
11. Organization employed, contracted with or otherwise utilized the services of a person, management company, consultant or other entity to manage, conduct or operate any aspect of an annual gaming event. §3-17-103(a)(5)(A)(i)	11. Twelve (12) month Annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
12. Proceeds of annual gaming event were used to pay a bonus, supplement or adjustment of compensation for a director, officer, employee, or employee of the organization. §3-17-103(a)(5)(A)(i)(b)	12. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
13. Proceeds of annual gaming event were used to pay compensation (outside of regular compensation) to a director, officer, employee, or member of the organization for duties in connection with an annual gaming event. §3-17-103(a)(5)(A)(i)(b)	13. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
14. Prohibited type of lottery game §3-17-102(8)(A)	14. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).

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NATURE OF DISQUALIFICATION	PERIOD OF DISQUALIFICATION
15. Organization's event participation was not authorized by General Assembly. §3-17-102	15. Refer for criminal prosecution. Secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
16. Annual gaming event was held more than 14 days prior to or after date listed in annual gaming event application. §3-17-103d)(1)(A)	16. Twelve (12) month annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
17. Organization whose name does not appear on Omnibus List planned, promoted or advertised an annual gaming event. §3-17-111a)	17. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
18. Organization sold tickets, shares, chances or similar items outside of period allowed by statute (NOTE: 120 days prior to date listed in application plus up to and including actual event date §3-17-103d)(3)	18. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
19. Less than 25% of proceeds of annual gaming event allocated or used for charitable purposes. §3-17-103a)(6)(A)	19. Good cause shown- may hold event next year. No good cause shown or failure for two consecutive years, permanent disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
20. Organization failed to file accounting within 90 days following annual gaming event date listed in application. §3-17-106	20. Five (5) year disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
21. Organization failed or refused to sign waiver of privacy rights statement to provide public web access to filed documents. §3-17-104(a)(9)	21. Twelve (12) month annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).

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NATURE OF DISQUALIFICATION	PERIOD OF DISQUALIFICATION
22. Person violated annual gaming event statute or has been convicted of violation of 39-16-702, 39-16-703, Title 39, chapter 17 parts 5 or 6 or similar offense in another jurisdiction. §3-17-111(a)	22. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
23. Organization held two or more annual gaming events within annual gaming event period. §3-17-103(d)(1)(A)	23. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
24. Complete Application or amendment was not submitted by application deadline. §3-17-103	24. Twelve (12) month annual gaming event period and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
25. Organization failed to file proper accounting. §3-17-106(b)	25. Five (5) year disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
26. Organization failed to maintain true and accurate records§3-17-108(a)(1)	26. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
27. Organization failed to maintain records for 5 years after event date. §3-17-108(a)(2)	27. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
28. Organization purchased, leased or accepted donations of prizes, facilities, advertising services, printing services telephone services or records, devices or other supplies to conduct an annual gaming event from a person, company, corporation or other business entity which has had a final judgment in excess of twenty-five thousand dollars rendered against such person or entity and such judgment has not been satisfied. §3-17-103(a)(5)(B)(iii)	28. Civil penalty not to exceed five hundred dollars (\$500) for each violation No Disqualification.

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NATURE OF DISQUALIFICATION	PERIOD OF DISQUALIFICATION
29. Organization purchased or leased prizes, facilities, locations, advertising services, printing services telephone services or records, devices or other supplies to conduct an annual gaming event at a price greater than fair market value, for a percentage of the proceeds of the annual event, or a contingency agreement based on the proceeds of the annual event. §3-17-103 (a)(5)(B)(i)	29. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
30. Organization purchased or leased prizes, facilities, locations, advertising services, printing services telephone services or records, devices or other supplies to conduct an annual gaming event from a director, officer, or employee in violation of §3-17-103(a)(5)(B)(ii)	30. Permanent Disqualification and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
CRIMINAL OFFENSES	CRIMINAL PENALTIES
31. Knowingly selling tickets for a period of time longer than authorized §39-17-651(a)	31. Class C Misdemeanor and /or maximum fine of \$1,000 per day and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
32. Knowingly conducting more than one annual gaming event within a 12 month period. §39-17-652b	32. Class A misdemeanor plus maximum fine of \$50,000 per event and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
33. Knowingly conducting an event at an unauthorized location or on an unauthorized date. §39-17-653 (a) and (b)	33. Class C misdemeanor and/or maximum fine of \$10,000 and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
34. Knowingly promoting unauthorized gambling under pretext of an annual event. §39-17-654(a)(1)	34. Class E felony and/or the greater of \$50,000 or proceeds of the gambling and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
35. Knowingly employ, contract with, or otherwise use the services of any person, management company, or consultant to manage conduct or operate an annual gaming event. §39-17-654(b)(1)	35. Class A misdemeanor and/or maximum fine of \$50,000 and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).

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CRIMINAL OFFENSES	CRIMINAL PENALTIES
36. Unauthorized person knowingly operates annual event. §39-17-654(c)(1)	36. Class D felony. Greater of \$50,000 fine or the amount paid to manage, conduct, or operate the event and secretary of state may assess a civil penalty not to exceed fifty thousand dollars(\$50,000)
37. Knowingly fail to file a financial accounting. §39-17-655(a)(1)	37. Class B misdemeanor and or maximum fine the greater of \$25,000 or event proceeds and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
38. Knowingly fail to timely file a financial accounting. §39-17-655(a)(2)	38. Class C misdemeanor and/or maximum fine the greater of \$5,000 or event proceeds and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
39. Make a material false statement in an application, affidavit or statement to Secretary. §39-17-655(a)(3)	39. Class A misdemeanor and/or maximum fine of \$50,000 and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
40. Make a material false entry or statement in a financial accounting. §39-17-655(a)(4)	40. Class A misdemeanor; maximum fine the greater of \$50,000 or dollar amount of false entry or statement. Secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
41. Falsely make, alter, forge, pass or counterfeit a ticket, share, chance, or similar record for an annual event with the intent to defraud. §39-17-656(a)	41. Class A misdemeanor. Maximum fine of \$25,000 and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).
42. Knowingly influence or attempt to influence the winning of a prize through coercion, fraud, deception, or tampering. §39-17-656(b)	42. Class E felony. Maximum fine of \$50,000 and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).

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CRIMINAL OFFENSES	CRIMINAL PENALTIES
43. Knowingly sell, lease or offer to sell, lease facilities, locations, advertising, printing or telephone services, gambling records or gambling devices based on a percentage of the proceeds or any other contingency agreement based on the proceeds of an annual gaming event. §39-17-657(a)	43. Class E felony. Maximum fine of \$50,000 and secretary of state may assess a civil penalty not to exceed fifty thousand dollars (\$50,000).

Authority: TCA § 3-17-113(a); TCA § 3-17-115(a) and (b).

1360-3-2-.15 CO-OPERATION WITH OTHER STATE AGENCIES.

- (1) All information submitted to the Division of Charitable Solicitations, Charitable Gaming Section shall be available to federal, state or local agencies for the purpose of assisting in carrying out the provisions of TCA 3-17-102 et. seq. and TCA 39-16-702 and TCA 39-16-703 and TCA title 39, chapter 17 Parts 5 and 6, TCA § 39-17-502(b), TCA § 39-17-505, TCA § 39-17-506(a), TCA § 39-17-601, TCA § 39-17-651 et. seq. and Title 3, Chapter 15, or any provision of federal law.
- (2) The secretary shall assist and co-operate with the Tennessee Bureau of Investigation and/or the Internal Revenue Service in the conduct of any investigation.

Authority: TCA § 3-17-115(a) and (b).

The emergency rules set out herein were properly filed in the Department of State on the 11th day of August, 2005, and will be effective from the date of filing for a period of one hundred sixty-five (165) days. These emergency rules will remain in effect through the 23rd of January, 2006. (08-14)

PROPOSED RULES

TENNESSEE HIGHER EDUCATION COMMISSION - 1540

CHAPTER 1540-1-2 AUTHORIZATION AND REGULATION

OF POSTSECONDARY EDUCATION INSTITUTIONS AND THEIR AGENTS

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

For a copy of proposed rule, contact: Melissa Stevenson, Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37243-0830, (615) 741-5293.

AMENDMENTS

Chapter 1540-1-2 is amended by deleting the current rules in their entirety and replaced with the following new rules. The text of the proposed rules is as follows:

PROPOSED RULES

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1540-1-2-.01 PREFACE

- (1) The Commission invites continuous, constructive cooperation with institutions, civic organizations, governmental agencies, Better Business Bureaus, students and others to ensure the enforcement and improvement of these standards for better service to all consumers. The observance of these rules is the responsibility of each institution for the inherent advantage to each institution and for the common good of all institutions.
- (2) These rules are complementary to the Tennessee Postsecondary Education Authorization Act. Many sections of the Act are so specific that the need for related rules is diminished or negated. Institutions or agents must comply with the current language of the Act and these rules as the total administrative reference.
- (3) Unless otherwise noted, general statements shall be in reference to institutions, businesses, services or any entity seeking, holding or required to hold a certificate of authorization under the Act and these regulations.

Authority: *T.C.A. § 49-7-2014.*

PROPOSED RULES

1540-1-2-.02 ROLE OF THE COMMISSION, COMMITTEE AND STAFF

(1) Role of the Commission:

- (a) The Tennessee Higher Education Commission at each quarterly meeting shall consider recommendations from the Commission staff and/or Postsecondary Education Institution Committee regarding all authorizations, awarding educational credentials (including authority to grant degrees) and any other matter at the request of the Commission's Executive Director.
- (b) No institution may solicit, recruit, award credentials or operate as a postsecondary educational institution until such authorization is granted by affirmative vote of the Commission.

(2) Role of the Executive Director:

- (a) The Executive Director is empowered to take any urgent action, based on these rules and Act, necessary to conduct this consumer protection regulatory function, during the periods between authorization action meetings of the Commission, subject to ratification by the Commission provided that:
 - 1. the Executive Director shall give written notice of such action to the affected party;
 - 2. the Executive Director shall instruct the affected party that they may notify the Commission within ten (10) days if the aggrieved party desires a hearing and review by the Commission, and that otherwise the action shall be deemed final;
 - 3. at the same time the Executive Director shall give written notice of the action to members of the Commission.
- (b) Whenever the Commission authorization staff cannot resolve a complaint or dispute to the administration of these rules, the Executive Director upon a written request from an aggrieved party which in the view of the Executive Director is justifiable, will provide a review and/or hearing for parties involved prior to presentation of the unresolved complaint or dispute to the Commission.
- (c) On the advice of the Committee on Postsecondary Education Institutions, the Executive Director, in consultation with the Commission, is authorized to recommend the waiving of deadlines or regulations developed pursuant to this Chapter, upon well-documented extraordinary cause, where necessary to carry out the provisions of this part in the public interest and where consistent with T.C.A. §§ 49-7-2001, et seq.
- (d) The Executive Director may exempt a program or activity from authorization or from compliance with a specific regulation if such an exemption can be demonstrated to be in the public good or interest. Such exemptions should be temporary and narrow in scope and be subject to annual review.
- (e) The Executive Director is empowered to act in the following matters, subject to a hearing and review by the Commission upon the request of the aggrieved party in the manner provided by T.C.A. § 49-7-2010(b).
 - 1. Assess fines under this Part.

PROPOSED RULES

2. Intervene to alter, place conditions on, suspend or revoke, in full or in part, an institution's or agent's authorization to operate.
 3. Issue temporary, conditional, limited, or probationary authorization.
- (f) Advise the Tennessee Student Assistance Corporation to notify the appropriate lending and guarantee agencies of the institution's closure.
- (3) Role of the Postsecondary Education Institution Committee:
- (a) The Postsecondary Education Institution Committee shall meet quarterly or at other times on the call of the Chairman of said Committee or pursuant to the call of the majority of Committee members, to serve as an advisory committee to the Commission, and make recommendations on:
 1. all initial applications for temporary authorization;
 2. all applications for regular authorization;
 3. all applications for reauthorization;
 4. the awarding of educational credentials;
 5. such other matters relating to the Postsecondary Education Act at the request of the Commission's Executive Director;
 - (b) The Division of Postsecondary School Authorization Staff, Committee, and, as needed, other experts appointed by the Executive Director, shall participate in institutional site visits for purposes of evaluating compliance with legislation and rules;
 - (c) The Committee shall exercise such powers and undertake such obligations as are delegated to it by the Commission under the provisions of Part 20 of this chapter. Such delegations shall include the authority to initiate and conduct on-site institutional reviews and investigations and the formulation of rules of procedure and performance standards for authorization and institutional performance, which actions shall be subject to review, approval and/or disapproval by the Commission.
 - (d) The Chairman of the Committee may appoint sub-committees as needed.
- (4) Role of the Commission staff:
- (a) Designated Commission staff members shall oversee and administer for purposes of compliance T.C.A. §§ 49-7-2001, et seq. and the related Postsecondary Regulations chapter 1540-1-2.
 - (b) Beginning July 1, 1997, the Division of Postsecondary School Authorization and Commission staff responsible for oversight of T.C.A. §§ 49-7-2001, et seq. and the related Postsecondary Regulations chapter 1540-1-2 shall be officially referred to as the Tennessee Higher Education Commission, Division of Postsecondary School Authorization.

PROPOSED RULES

- (c) Perform site visits to review, inspect and investigate as necessary, institutions seeking, holding or required to hold a certificate of authorization for verification of compliance. This includes but is not limited to initial authorization for new institutions, new program reviews, authorization inspections for nonexempt Tennessee institutions, follow-up to written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers.
- (d) Investigate as necessary all non-authorized postsecondary educational activities operating in Tennessee to verify adherence to these rules by all institutions not exempted by the Act.
- (e) Establish a deadline for submission of initial authorization packages, new program applications and any other materials to be included on the agenda for each quarterly meeting of the Postsecondary Committee. (Institutional Applications (1540-1-2-.07)).
- (f) Share with state or federal agencies information for institutions seeking, holding or required to hold a certificate of authorization and unauthorized educational operations. Provide state or federal agencies information pertaining to school closures under any condition. Share with appropriate accrediting bodies any adverse action taken by the Executive Director or Commission.

Authority: T.C.A. § 49-7-2014.

1540-1-2-.03 DEFINITIONS

- (1) The following definitions are complementary to definitions in T.C.A. § 49-7-2003 and have the following meanings, unless the context clearly indicates otherwise:
 - (a) "Ability-to-benefit" as used in these regulations, in contrast to the use of that term for federal financial aid or other purposes, means students, regardless of financial condition, who do not possess a high school diploma or GED, but who have demonstrated that they can profit materially or personally from a certain course of study.
 - (b) "Academic" in description of a program or institution means that which is organized primarily for academic training or transfer.
 - (c) "Accreditation" is a non-governmental, peer evaluation of educational institutions and programs. Private educational associations of regional and national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs. These criteria determine whether or not institutions or programs are operating at basic levels of quality. The Commission only recognizes accrediting agencies that are recognized by the U.S. Secretary of Education and the U.S. Department of Education. Additionally, accreditation is voluntary and is not required by State law. In most cases, authorization for one to two years is a prerequisite for accreditation.
 - (d) "Act" means the Postsecondary Education Authorization Act of 1974, T.C.A. §§ 49-7-2001, et seq. as amended.

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- (e) “Adverse action” means action taken by the Executive Director or Commission to penalize, limit, change, suspend or cause to cease activity that is in non-compliance with the Act and these rules. Such adverse action may include but not be limited to fines of \$500 per violation per day; suspension of activity; conditional authorization or revocation.
- (f) “Agent” means a person employed full- or part-time by the institution, whether the institution is located within or outside of the State of Tennessee, to act as a representative, solicitor, broker, or independent contractor to directly procure or influence people to become students or enrollees for the institution at an off-campus location.
- (g) “Articulation agreement” for the purposes of the Division of Postsecondary School Authorization, refers specifically to “program articulation”, i.e., the process of developing a formal, written agreement that specifically breaks down courses (or sequences of courses within a program) from institution(s) that are comparable, and acceptable in lieu of, specific course requirements at similar institution(s). An articulation agreement is an agreement, a legal document with the appropriate signatures that specifies which courses at said institution(s) may be transferred to meet general education, major requirements, and electives at the receiving institution. These agreements, maintained by the Articulation Officers, at both institutions, facilitate the successful transfer of students between the two entities, to include, but are not limited to, associate and baccalaureate level institutions and ultimately comprehensive or research universities for masters and doctoral level programs.
- (h) “Associate degree” means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least sixty (60) semester credit hours or ninety (90) quarter credit hours of instruction, or equivalent.
- (i) “Authorization to operate” means permission to operate for a specified time in a specified place(s). An institution or agent awarded a letter or certificate of authorization in Tennessee shall not use terms to interpret the letter or certificate which specify or connote greater approval than simple permission to operate. Terms which may not be used include, but are not limited to, “accredited”, “supervised”, “endorsed”, “licensed”, and “recommended by the Commission.”
- (j) “Authorization site visit” means an institutional site visit conducted by Commission staff or Postsecondary Committee members to verify compliance with Postsecondary Education Authorization Act of 1974, T.C.A. §§ 49-7-2001, et seq. as amended and the chapter 1540-1-2 of the Postsecondary Regulations. The authorization visit is commonly called a ‘site visit’.
- (k) “Bachelor’s degree” means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter hours, or equivalent.
- (l) “Certificate program” generally means one or more technical courses usually completed in one to twenty-six weeks, or up to and including five hundred (500) contact hours normally with a single skill objective.
- (m) “Certified” when used to modify audit refers to an audit in accordance with Generally Accepted Auditing Standards (GAAS) and in accordance with the auditing standards set forth in the book, “Government Auditing Standards” issued by the Comptroller of the United States (often referred to as the “yellow book” standards). If, however, the entity is required

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for other reasons to have conducted a certified audit in accordance with O.M.B., Circular A-133, such an audit shall be an acceptable substitute for the audit required pursuant to these regulations.

- (n) "Closed enrollment" means instruction provided between an educator or educational service to a group or business on a private contractual bases, whereby public solicitation does not occur and the instructional provider is given a list of enrollees to train at no cost to the students.
- (o) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary institution offering courses of study leading to traditional undergraduate college degrees. Some examples of traditional degrees are, but are not limited to: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.
- (p) "Commission" means the Tennessee Higher Education Commission.
- (q) "Contact Hour" (clock hour) refers to actual directed or supervised instructional time, not to be less than fifty (50) minutes for every sixty (60) minutes of time.
- (r) "Credential" refers to educational credentials which include but are not limited to: certificates, diplomas, letters of designation, degrees, transcripts or any other papers generally taken to signify progress or completion of education and/or training at a postsecondary educational institution.
- (s) "Degree" means letters of designation or credential or a title from a postsecondary level program acceptable to and so authorized by the Commission and/or an accrediting body recognized by the U.S. Department of Education. Typically used in some form is the term 'associate', 'bachelor', 'masters' or 'doctor' in the credential designation.
- (t) "Diploma program" means a program of instruction offering technical and some basic course work. Some general or peripheral courses may be included. The program shall generally range for more than five hundred (500) contact hours but less than contact requirements for the Associates degree.
- (u) "Doctoral degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least ninety (90) semester hours or one hundred thirty-five (135) quarter hours of graduate credit or equivalent.
- (v) "Enrollment" refers to those students who have completed the institution's application forms, submitted a financial deposit where required, and have actually attended one or more sessions of classes, or, in the case of home study programs, received one or more lessons.
- (w) "Educational service" means an individual or business established to provide services such as, but not limited to, a testing service, test preparation or a business that assists people in gaining academic credit for life experience, non-accredited courses or non-college training.

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- (x) "General education courses" are general education core or academic subjects intended to broaden communication/language skills, contribute to the intellectual growth of the student and give balance to the total program beyond the area of vocational or professional concentration,
- (y) "Independent certified public accountant" means a C.P.A. not associated with the institution or its owners, especially in such a way that a conflict of interest or appearance of conflict arises.
- (z) "Institute" means a postsecondary institution offering courses of study and training not usually associated with traditional liberal arts degrees. Appropriate credentials awarded would include applied science degrees, certificates, and diplomas such as the Associate of Applied Science (A.A.S).
- (aa) "Institutional director" means the institutional executive designated by the institution to assume responsibility for the conduct of the institution and its agents within these rules and the Act. Further, the institutional director will serve as the official contact for all business conducted between the institution and the Commission and maintain complete authorization files.
- (bb) "Instructional Site" means a non-residential facility that is commercially zoned, utilized for the training of students.
- (cc) "Long Distance Learning" means a system and process that connects learners with distributed learning resources through delivery systems at a distance such as correspondence, video tape, audio tape, telecommunications, computer resources, computer network system or an electronic delivery system, where there is physical separation of the instructor and student.
- (dd) "Master's degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least thirty (30) semester credit hours or forty-five (45) quarter credit hours, or equivalent.
- (ee) "Non-exempt institution" means all postsecondary institutions not specifically exempted under provisions of T.C.A. § 49-7-2004 of the Act or Section 1540-1-2-.05 of these rules and means all instructional sites which must have separate authorization.
- (ff) "Out-of-state", as applied to describe an authorized postsecondary educational institution, means an institution that maintains its primary campus in another state, but has physical presence in Tennessee.
- (gg) "Physical presence" means actual presence within the state of Tennessee for the purpose of conducting activity related to: a postsecondary educational institution; an educational service; dissemination of educational credentials; enrollment; solicitation or advertising. Physical presence as further outlined for purposes of authorization shall include but not be limited to:
 - 1. An instructional site within the state;

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2. Instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors etc., or computer resources, or computer linking (e.g. Internet), or any form of electronic telecommunications;
 3. Dissemination of an educational credential from a location within the state;
 4. An agent, recruiter, institution or business that solicits for enrollment or credits or for the award of an educational credential;
 5. Advertising, promotional material or public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding or required to hold a certificate of authorization.
- (hh) "Postsecondary education institution" means an entity which maintains a place of business within Tennessee, or solicits business in Tennessee, and which offers or maintains a course or courses of instruction or study, or at which place of business such a course or courses of instruction or study are available through field instruction, classroom instruction or by long distance learning or both to a person or persons for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, service or industrial occupation, for a vocation, or for the award of an educational credential, except as excluded by the provisions of these rules and the Act.
- (ii) "Quarter" is a period of instruction into which the academic year may be divided. A quarter must consist of at least ten (10) weeks.
- (jj) "Quarter credit hour" means a measurement of scholastic attainment earned by receipt of instruction of one (1) classroom lecture hour per week for one (1) quarter or two (2) hours of laboratory experience per week for one (1) quarter, or three (3) hours of intern/externship experience per week or the equivalent number of hours.
- (kk) "Residence course" means a course in which the student comes to an institutional campus or instructional site as opposed to a course where the student stays at home (i.e. Long Distance Learning).
- (ll) "School" means (1) A unit within a college or university that offers specialized instruction (i.e., a school of engineering). (2) An institution that offers specialized instruction in areas (i.e., driving, modeling, basic travel training) not usually associated with college or university education. Appropriate credentials awarded would include certificates and/or diplomas. Institutions using the name of "school" do not usually offer degrees.
- (mm) "Semester" is a period of instruction into which the academic year may be divided. A semester must consist of at least fifteen (15) weeks.
- (nn) "Semester credit hour" means a measurement of scholastic attainment earned by receipt of instruction of one (1) classroom lecture hour per week for one (1) semester or two (2) hours of laboratory experience per week for a semester, or three (3) hours of intern/externship experience per week or the equivalent number of hours.
- (oo) "Solicitation" means contact, written or verbal, on the part of anyone representing an institution, for the purpose of supplying information in an attempt to enroll Tennessee residents.

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- (pp) "Tuition" shall mean but not be limited to, any money or fee involving the student, actually charged or tracked as a bookkeeping item for instruction/training provided.
- (qq) "Unearned tuition" means at any given time, the total of refunds due former students, all tuition and fees that have or will be collected from students prior to graduation and which would be refundable pursuant to 1540-1-2-.17 of these rules, and any tuition and fees collected in advance from prospective students.
- (rr) "University" means a postsecondary institution that provides facilities for teaching and research, offers traditional undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs. Some examples of traditional degrees are: Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.
- (ss) "Vocational" in description of a program or institution means that which is organized primarily for job entry or upgrading of job skills that would result in a new job title or position.

Authority: T.C.A. § 49-7-2005.

1540-1-2-.04 DETERMINATION FOR REQUIRED AUTHORIZATION

- (1) No entity may advertise, solicit, recruit, enroll or operate a postsecondary educational institution as given in the Act and these regulations until so authorized for operation in the state by affirmative vote of the Tennessee Higher Education Commission during a scheduled public meeting.
- (2) Depending upon the individual circumstance in reference to exemption categories, any of the following determining factors along with physical presence may qualify an operation for required authorization:
 - (a) Operating under the definition of postsecondary educational institution as given in the Act and these regulations.
 - (b) Issuance or award of any educational credential as given in T.C.A. § 49-7-2003(7).
 - (c) Fees and/or tuition charged, tracked or maintained on the books for instruction or training in a postsecondary educational institution or business operating as such.
- (3) Businesses with vocational training programs that solicit or recruit students as 'employees' with phrases such as, but not limited to, "inexperience - will train" or "experience not required" must provide all training related to that job at no cost to the individual. Payroll deductions, minimum employment periods as a result of a company's 'investment' in the employee, or fees levied if an individual leaves that employment, or similar practices, shall constitute a fee and/or tuition for training which requires authorization for the operation as a postsecondary educational institution.
- (4) Institutions with a physical presence in Tennessee providing postsecondary training/education, that forward student records to another school or any other source whether in this state or elsewhere for the award of a degree or any other educational credential shall be required to be authorized for operation.

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- (5) Individuals, businesses or institutions determined by Commission staff to be currently operating as a postsecondary educational institution pursuant to the Act and these regulations and not expressly exempted by complete conformance to T.C.A. § 49-7-2004 and/or Postsecondary Regulation 1540-1-2-.05 shall be subject to review by Commission staff for recommendation to the Executive Director for action or referral.
 - (a) Unauthorized schools determined to be operating as a postsecondary educational institution must make immediate good faith efforts toward compliance by submitting a complete Initial Authorization package with appropriate fees. Failure to comply may result in adverse action and/or referral to other state or federal agencies for review.
- (6) Institutions seeking authorization should refer to Minimum Authorization Standards and Requirements 1540-1-2-.06.

Authority: T.C.A. §§ 49-7-2002, 49-7-2003, 49-7-2005, 49-7-2006 and 49-7-2011.

1540-1-2-.05 EXEMPTION

- (1) In addition to institutions exempt by Tennessee Code Annotated, Chapter 49-7-2004, the following institutions are exempt from the annual reporting and the provisions of these regulations:
 - (a) any entities offering education, instruction or training that meet 1, 2, 3, or 4 in its entirety as follows:
 - 1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing without charge, payroll deduction or minimum length of employment; or
 - 2. maintained or given by a U. S. Department of Labor or state recognized labor organization, without charge, to its membership or apprentices; or
 - 3. financed and/or subsidized by public funds, without charge to the students, having a closed enrollment; or
 - 4. given under a contract agreement, having a closed enrollment, at no cost to the student and does not offer degrees or educational credentials such as but not limited to diplomas or special certifications that in the opinion of the Commission are specifically directed toward new or additional vocational, professional or academic goals.
 - (b) Short-term programs for which all promotional materials and advertisements indicate that the program purpose is exclusively for self-improvement, or instruction that is motivational or avocational in intent as determined by Commission staff.
 - (c) Programs that operate under Part 61 of the Federal Aviation Regulations and that provide only avocational training are exempt. Aviation programs that operate entirely under Part 141 of the Federal Aviation Regulations and programs that operate under Part 61 of the Federal Aviation Regulations and that provide vocational training are non-exempt. Oversight of these aviation schools will in no way conflict with oversight provided by the Federal Aviation Administration. While the FAA oversight ensures adequate curricula and safety of the student, the Commission's oversight is focused on protection of the personal and financial interests of the student.

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- (d) Institutions which offer intensive review courses designed solely to prepare students for graduate and/or professional school entrance exams.
 - (e) Bona fide religious institutions that:
 - 1. offer instruction or training without charge or any expense to participants and do not offer degrees of any type within the institution;
 - 2. do not suggest that postsecondary credit may be awarded by another party or transfer in educational credentials from another source;
 - 3. nor offer diplomas/certificates that in the opinion of the Commission replicate letters of designation or degrees.
- (2) To operate within exemption status, the following guidelines shall be used:
- (a) Institutions that clearly qualify as exemption under the Act or these regulations after Commission staff review shall be considered exempt from authorization without a vote of the Commission.
 - (b) Institutional exemption is subject to annual staff review and/or revocation any time the activity deviates from the original determination factors for exemption.
 - (c) Exemptions secured under this section of the rules are effective for each authorization year beginning on July 1, except as individuals or groups of institutions are notified prior to June 15 preceding any authorization year by a letter from the Executive Director of the Commission which shall state the bases for removal of any exemption.
 - (d) Exemptions can be revoked or amended by the Commission as they pertain to individual institutions whenever it is determined by the Commission that an institution exempted by the Act or these regulations has not acted in accordance to the purpose of T.C.A. § 49-7-2002, 'Legislative intent'.
- (3) Institutions or educational providers seeking an exemption status (or not wanting to pursue authorization) that in the opinion of Commission staff do not clearly qualify under the exemption categories given in the Act and these rules will be required to complete an Exemption Request Form. The form shall include but not be limited to: copies of all institutional materials; brochures; advertising; state charter or business license; organizational ties and/or contracts with other educational providers and a descriptive narrative of how the organization qualifies for exemption specifically citing the Act and/or rules.
- (a) Based upon the submitted material Commission staff shall make a written determination of institutional status. If the institution is aggrieved by that determination, the party may appeal in the manner provided by Rule 1540-1-2-.02(2)(b) and T.C.A. § 49-7-2010(b).

Authority: T.C.A. §§ 49-7-2002, 49-7-2004, 49-7-2005, 49-7-2006, 49-7-2008.

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1540-1-2-.06 MINIMUM AUTHORIZATION STANDARDS AND REQUIREMENTS

- (1) Institutions authorized to operate or seeking authorization to operate in Tennessee must meet the minimum requirements stated in T.C.A. § 49-7-2006, and as further defined in these regulations.
- (2) Meet the definition of a postsecondary educational institution as given in the Act and/or these postsecondary regulations.
- (3) Have physical presence in the state as given in these regulations.
- (4) Establish a charter or business license in the state of Tennessee for the proposed institution.
- (5) Financial stability to start up and initially operate a postsecondary educational institution demonstrated through a certified audit or statement acceptable to the Commission of the resources to be utilized in the school.
- (6) Ability to secure a continuous institutional surety bond or like security described in 1540-1-2-.07, subparts (6)(a) and (10).
- (7) Have an educational program(s) consistent with standards in Tennessee for length, content and quality for the educational credential offered in compliance with the Act and these regulations.
- (8) All programs must include training and substantive content to attain outcomes stated as the program purpose and mission of the institution.
- (9) No principal party, owner or administrator involved with the proposed institution has ever been associated with a postsecondary educational institution that ceased operation with resulting loss of time or money for enrollees or had institutional authorization to operate in a state revoked or had a felony conviction involving moral turpitude, fraud or a capital crime.
- (10) Before an institution is granted temporary authorization, the following requirements and standards required of an approved school must be met in preauthorization and maintained operationally.
 - (a) Complete all required initial authorization materials in the package provided by the Commission staff with payment of all corresponding fees.
 - (b) Verification of a stable physical presence and/or a physical site acceptable to the Commission and these rules.
 - (c) Establish and maintain all operational and administration standards, such as educational, financial, admissions, enrollment, instructor, etc., as given in these rules.
 - (d) New or revised programs must conform with all requirements given in these rules under New Program or Change in Program.
 - (e) Compliance for each of the educational credential(s) offered by the applicant institution, with requirements as given under Non-Degree Granting Institutions or Degree Granting Institutions.

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- (f) Demonstrate compliance for branch sites or expansion of programs by prior approval or prior notification with the institution's accrediting body wherever necessary to be consistent with the requirements of the accrediting body and the federal regulations.
- (11) No out-of-state institution will be considered for authorization if it is not authorized in the state where primarily located.
- (12) Any institution based primarily outside of Tennessee which proposes to set up a site in Tennessee and is not accredited by an agency recognized by the Commission must forward reasons why resources would not best be spent on accreditation at current site.
- (13) An exception to any part of the Minimum Authorization Standards must be reviewed on an individual basis by the Commission.
- (14) School Name:
 - (a) No postsecondary educational institution under the Act and these rules may use the word "university" in their name unless the school has been so approved by a regional accrediting body so recognized by the U. S. Department of Education.
 - (b) No postsecondary educational institution under the Act and these rules may use the word "college" in their name unless the school has been so approved by a regional accrediting body recognized by the U. S. Department of Education, or uses an appropriate qualifier preceding the word "college", such as "career", "vocational", "business", "technical", "art", etc., or in the case of a religious institution, "Bible", or a denominational term.
 - (c) All institutions authorized after July 1, 1997 using "college" in accordance with item 14(b) above, must achieve regional or national accreditation from an accrediting body recognized by the U. S. Department of Education in a timely manner while demonstrating consistent good faith efforts toward achieving that goal.
 - 1. New institutions authorized after July 1, 1997 that demonstrate in the application process, that the school is capable by program length, content, adequate physical site and administrative capability of achieving accreditation, may initially use "college" in the institutional title as outlined in 1540-1-2-.06(14)(b) above.
 - 2. Institutions may use "Junior College" as a qualifier in the name of the institution provided that the institution has a current articulation agreement with a regionally accredited college or university. Loss of the articulation agreement will require removal of "Junior" as a qualifier, to be replaced on a schedule agreeable to the Commission with an institutional name in compliance with these rules.
 - 3. Institutions that fail to make good faith efforts toward accreditation or achieve accreditation in a timely manner shall be required to remove "college" from the institutional title.
 - 4. The Executive Director may consider an exception to 1540-1-2-.06(14)(a) and (b) given above for special or unique circumstances. Institutional waivers will be null and void with a change in ownership.
- (15) A sign, acceptable to the Commission, must be affixed to the building and/or the main entrance door indicating the name of the institution.

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Authority: T.C.A. §§ 49-7-2002, 49-7-2004, 49-7-2005, 49-7-2006, 49-7-2008.

1540-1-2-.07 INSTITUTIONAL APPLICATIONS

(1) Application deadline:

- (a) Incomplete submissions as given below in Authorization - What Constitutes a Complete Application, or applications submitted after the established deadline and/or that are untyped or incomplete, may be deferred to the next quarterly meeting at the discretion of staff.
- (b) Institutions that voluntarily or involuntarily defer an application before the Committee will have two additional Committee/Commission meetings to complete, correct and/or submit the application by that established deadline date. Failure to complete the application process in the established time extension will require a new application and loss of all previously paid fees.
 - 1. Exceptions must be requested in writing and granted by the Executive Director.

(2) Authorization - What Constitutes a Complete Application:

- (a) Prior to operation, which includes advertising, recruitment and solicitation, institutions seeking or required to hold an authorization must submit on forms provided by the Commission, a completed and typed application which includes at least the following:
 - 1. a title or name of the institution in compliance with these rules;
 - 2. a copy of the Tennessee State Charter as filed with the Secretary of State (incorporated) or local business license (sole proprietorship);
 - 3. name(s), home address(es), and phone number(s) of all owner(s), controlling officer(s), and/or members of the board of directors;
 - 4. address and general description of facilities;
 - 5. list of instructional equipment for each program (owned or leased);
 - 6. qualifications for instructional staff and supervisors (1540-1-2-.16);
 - 7. designation of an institutional director for each site responsible for authorization contracts and maintenance of records and all other duties as described under Personnel and Instructor Qualifications;
 - 8. definition of any administrative structure above the director with the signature of the official that will notify the Commission if the director is replaced;
 - 9. a check or money order payable to the State Treasurer for Tennessee for such fees as prescribed under these rules;
 - 10. institutional surety bond as prescribed by T.C.A. § 49-7-2013;

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11. a copy of the enrollment contract or agreement described in these regulations;
 12. a copy of the Enrollment Disclosure Standards (1540-1-2-.13) checklist if not incorporated within the enrollment agreement (contract);
 13. information pertaining to institutional facilities ownership, length of any lease and time in present quarters. Information must include total square feet, available floor space for conducting programs, and subtotals for classrooms, offices, and library space (with number of volumes held). Instructional equipment (specify owned or leased) must be listed and described;
 14. Current verification of fire and sanitation inspections of educational facilities (and student housing owned, leased or operated by the institution) must be filed;
 15. a draft or copy of the institutional catalog (see 1540-1-2-.11);
 16. a complete description of the proposed educational programs in compliance with the Act and these rules;
 17. a complete syllabus for each course proposed that demonstrates sufficient content and depth for the proposed level of the program and credential offered;
 18. any specific requirements as outlined under degree granting and/or non-degree granting sections of these regulations;
 19. if participating in federal student financial aid programs, a copy of the most recent audits or program reviews of such programs by any applicable non-profit, state or federal agencies, including, but not limited to, any student guarantee agency and the United States Department of Education;
 20. evidence of institutional financial stability as follows:
 - (i) sufficient finances to establish and conduct proposed operation;
 - (ii) audited financial statements consistent with generally accepted accounting principles and signed by a certified public accountant not associated with the institution or its owners;
 21. the balance sheet in the financial statement must reflect owner's (proprietorship, partnership, corporation, other, etc.) assets and liabilities.
- (3) Each application for a certificate of authorization or change of ownership must be signed by the applicant and signature(s) must correspond with required names on surety bonds. If the applicant is a partnership, all partners must sign. If the applicant is a corporation, it must be signed and certified by the president and secretary; all officers of the corporation must be listed.
- (4) A separate application for authorization, which is site specific, must be made for each location.
- (5) The institutional director must sign and date, on forms provided by the Commission, the director's intention to:
- (a) conduct the institution in accordance with the Act and rules established by the Commission;

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- (b) advertise or solicit using institutional employees familiar with these rules;
 - (c) advise the Commission within a reasonable time in advance if the controlling officers change or the school ceases operation;
 - (d) notify the Commission of staff changes by forwarding staff information forms for new staff and informational letter for staff terminations;
 - (e) advise the Commission of any application to operate in another state (Tennessee institutions only);
 - (f) sign significant operational documents (such as those vouching for accuracy of staff information, moral character, program revisions, etc.); and
 - (g) forward, if participating in federal financial aid programs, a copy of each audit of such programs by applicable state and federal agencies, applicable non-profit, state or federal agencies, including, but not limited to, the Tennessee Student Assistance Corporation and the United States Department of Education.
- (6) Bonds Requirements for Institutions
- (a) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from an insurance company licensed in Tennessee, a surety bond for the penal sum of \$10,000 for in-state institutions and \$20,000 for out-of-state education institutions.
- (7) Out of state institutions must, on forms provided by the Commission, secure a surety bond for agents in the penal sum of \$5,000 per agent from a surety company authorized to do business in Tennessee with the applicant institution as principal. Such applications must be accompanied by verification by the issuing agency that the individual seeking a permit is covered by a \$5,000 surety bond.
- (8) Bonds provided by institutions under Section 1540-1-2-.07(6)(a) and (7), must be accompanied by the name, office address, and phone number of the issuing insurance company representative and the bond must be site specific.
- (9) Bonds provided by institutions under Section 1540-1-2-.07(6)(a) and (7), must be identified on the top half of the first page by the name and the address of the institution. Bonds and verification of bonds should be forwarded to the Commission by institutional directors, and not directly from issuing companies.
- (10) Certificates of deposit or a cash deposit with a bank may be accepted in lieu of the bond, pending approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.
- (11) Fire and Sanitation Inspections:
- (a) Applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.

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- (b) Tennessee institutions seeking initial authorization and renewal must maintain documentation in their authorization records that a fire and sanitation inspection has been successfully passed during the past twelve months and, further, the institution must notify the Commission of the most recent inspection dates as part of the renewal application. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.
 - (c) Out-of-state institutions must forward to the Commission a copy of fire and sanitation inspection reports and these reports must be made at least every twelve months.
 - (d) Commission staff may seek supplemental fire and/or sanitation reports from appropriate local or state agencies.
- (12) New Ownership / Change in Ownership:
- (a) The following constitutes new ownership:
 - 1. in the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;
 - 2. in the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred;
 - 3. when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.
 - (b) A person or persons purchasing an institution authorized to operate shall comply with all the requirements for securing an initial, new authorization including new program applications for each program. In addition, a copy of the sales contract(s), bill(s) of sale, deed(s), and all other instruments necessary to transfer ownership of the institution shall be submitted to the Commission.
 - (c) Commission staff should be notified of any anticipated change of ownership prior to the change. In the event of a change of ownership greater than fifty (50) percent, a new owner or governing body must request from the Executive Director conditional authorization to operate until temporary authorization can be acquired under the established standard procedure, by recommendation of the Committee for Postsecondary Educational Institutions, and by affirmative vote of the Commission.
 - (d) The sale or transfer of ownership interest after the death of an owner of an institution to either a family member or a current stockholder of the corporation is not considered a change in ownership, and the Executive Director may determine that other transfers should also be excluded from these requirements.
- (13) New Program or Change in Program:
- (a) Vocational program names and objectives must generally coincide with or be equated with the *Dictionary of Occupational Titles* published by the U.S. Department of Labor and/or the *Classification of Instructional Programs* published by the U.S. Office of Education, National Center for Education Statistics.

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- (b) New institutions proposing to offer programs similar to those conducted by Tennessee institutions under the Tennessee desegregation plan must submit a description of the anticipated effect of the proposal on the racial composition of higher education institutions in Tennessee.
 - (c) New institutions must submit a rationale with supporting data to justify initiation of programs proposed.
 - (d) Authorized institutions must submit to the Commission a supplementary application if additional programs are proposed during any authorization year and the program must be authorized prior to operation, which includes advertising or solicitation. Applications must be received by the quarterly deadline established by Commission staff to be included on the ensuing Committee and Commission agenda.
 - (e) Ongoing institutions that make changes to an existing program(s) previously approved by the Commission, must file a new program application if program changes exceed twenty-five (25) percent, or if in the opinion of staff, a significant change has occurred. Changes of less than twenty-five (25) percent should be reported by submitting a change of program form as a file item to the Commission, detailing changes made. All changes must be reflected in the institutional catalog.
 - (f) Institutions shall not arbitrarily add a course or courses to an existing program in which a student would incur additional time and expense beyond the catalog requirements at the time of enrollment, unless the addition is in response to: demonstrated educational necessity; a reasonable program completion period had elapsed; state approval agencies; recognized accrediting agencies or for requirements of professional certifications or licenses. Under approval conditions, the institution shall provide written notification to the Commission and give adequate notice to all students affected prior to any change.
- (14) New Location / Change of Address:
- (a) An application from an authorized institution to reflect a new location shall be submitted to the Commission staff, and include all documents designated by the Executive Director as being necessary, with the appropriate fee, thirty (30) days prior to moving. Documents shall include but are not necessarily limited to: (1) evidence of satisfactory health inspection, (2) evidence of satisfactory fire inspection, (3) copy of lease, and (4) all physical material and building requirements given under Initial Authorization. Approval may be issued after the new facilities have been inspected and the application is complete. If a move is beyond ten (10) miles and a student is prevented from completing the training at the new location as determined by the Executive Director, a full refund of all monies paid and a release from all obligations will be given to the student or loan holder.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013.

1540-1-2-.08 REGULATIONS FOR SPECIFIC SCHOOL TYPES

- (1) General:
 - (a) Institutions offering programs of legal interest to other state agencies must, if directed by the Commission, provide information necessary for the dual review of the program. (For

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example, any institution proposing a teacher education program for the purpose of teacher licensure must also be reviewed by the State Board of Education).

- (b) Authorized institutions that promote, advertise or use prepared materials of any entity that offers vocational/professional certifications (that are not part of the school's authorized educational credential) or certification exams, (e.g. national certifying exam for Phlebotomy) must demonstrate to the Commission clear benefit to the students prior to usage. The Commission, upon review, may rule to:
 - 1. allow promotion and usage because of benefits to the student;
 - 2. allow promotion and usage but with clear disclosure to the students with language such as, 'This certification is voluntary and is not required for employment in the State of Tennessee' or 'This certification is voluntary and is not necessarily used as a standard of recognition for employment within the industry';
 - 3. deny usage. (see Prohibitive Acts 1540-1-2-.18).
 - (c) Unauthorized institutions that promote, advertise or use prepared materials of any entity that offers vocational/professional certifications may be required to become authorized for such activity.
 - (d) Institutions must adhere to all copyright laws and observe intellectual property rights in conducting the school.
 - 1. Using video tapes or other forms of telecommunication as a large portion of the contact hours in a program or on a per class basis for the purpose of granting educational credit, must have implied consent by purchase or the written consent of that instructor and/or the institution that produced the educational material, prior to incorporating them into the curriculum.
- (2) Non-Degree Granting Institutions:
- (a) Non-degree programs which are designed primarily for job entry or upgrading of skills must be described in clock (contact) hours.
 - (b) Non-degree programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.
 - 1. Institutions must provide a minimum program length that adequately prepares students for entry level employment.
 - 2. Program lengths that exceed standard or currently acceptable times or program periods established by regulations and/or statutes must justify expansion of training in terms of exceptional student benefits. Such programs may also be required to review curriculum to evaluate consolidation of classes and course material.
- (3) Degree Granting Institutions:

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- (a) New institutions seeking authorization to offer degrees in the State of Tennessee or new program applications for a degree program must submit the application by the deadline date established by Commission staff, which shall be forty-five (45) to ninety (90) days prior to the quarterly meeting of the Committee on Postsecondary Educational Institutions.
- (b) All degrees offered must be approved by name and designation by the Commission. No institution may offer traditional degrees or professional degree designations such as those given in the definitions under “college” and “university” unless previously approved by a recognized regional accrediting body.
 - 1. An exception may be approved by the Executive Director upon recommendation of Commission staff.
- (c) Authorization to offer any degree in the state will require either institutional accreditation as defined in these regulations or authority to grant degrees by affirmative vote of the Commission. Accredited institutions shall be deemed during initial authorization to have met the minimum requirements to offer degrees.
- (d) Non-accredited institutions seeking authority to grant degrees in the state must meet, in addition to the requirements in these regulations for temporary or regular authorization, the additional fee as given in these regulations and demonstrate compliance with, but not limited to the following standards:
 - 1. the operation shall incorporate instructional procedures, texts and materials appropriate to the purpose, curriculum and standards of postsecondary degree granting institutions offering similar programs in the state;
 - 2. twenty-five (25) percent to fifty (50) percent of the total program, depending on the degree offered, must be in general education courses and should be indicated separately in the curriculum presented;
 - 3. a syllabus for each course offered;
 - 4. library resources and holdings that shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
 - 5. demonstration that the degree and the program has merit and value academically, professionally or vocationally in Tennessee;
 - 6. master and doctorate level degrees must demonstrate in the curriculum and outcomes increasing levels of critical, analytical and interpretive thinking, use of primary documents or resources and independent research skills.
- (e) Undergraduate degree programs must include at least twenty-five (25) percent to fifty (50) percent of the program in general education courses unless the institution can demonstrate program accreditation requirements which are less. Non-accredited institutions proposing to offer associate degree level programs which are technical in nature, and have less than twenty-five (25) percent of general education courses must demonstrate to Commission staff the benefit to students. All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five (25) percent of the general education staff with earned master’s degrees or equivalent.

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- (f) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate student to student and student to staff exchange of ideas, provide appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.
- (g) Degree program admission policies must be at least the following:
 - 1. undergraduate degrees must require a high school diploma or equivalency, and
 - 2. graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.
- (4) Long Distance Learning:
 - (a) Required authorization of long distance learning institutions shall be reviewed based upon Commission staff evaluation of physical presence. Computer networks or other electronic delivery systems or other forms of long distance learning that might have institutional components in multiple locations outside of this state will be reviewed based upon origination of but not limited to any of the following from Tennessee: instruction, institutional administration or issuance of an educational credential.
 - 1. No ruling by the Commission regarding authorization or exemption of a long distance learning provider will be interpreted to limit review by any other state agency concerning issues of consumer protection and disclosure.
 - (b) All authorized long distance learning institutions must provide a printed catalog, enrollment disclosure statement and a contract as required in these regulations. Institutions that enroll students by means such as computer network or telecommunications must provide evidence that the student has acknowledged receipt of the required information.
 - (c) Home study or long distance learning institutions must meet directly and indirectly all requirements of the Act and these regulations and must seek authorization for a specific location, assign specific administrative responsibilities at each separately authorized site to a director for adequate and appropriate staffing to serve the stated purpose and to make reports as directed by these rules, and as requested by the Commission staff.
 - (d) Long distance learning courses or programs must consist of at least the following:
 - 1. a preliminary lesson or set of instructions on how to study by the home study method, or adequate study instructions per assignment;
 - 2. current and accurate text or lesson materials; and
 - 3. instructional service or individualized feedback on each unit assignment which must be based on examination questions or problem assignments which thoroughly stress the important phases of the subject presented.
 - 4. demonstration that instruction in each course including general education courses is presented by a qualified instructor(s), and that required student evaluation or feedback for each course or lesson is also by an instructor qualified in that specific course or subject matter area.

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5. evidence that adequate library or research resources are available to all students that may enroll appropriate to the type and level of the educational program and credential offered.
 6. educational goals and overall program goals are achievable through long distance learning and that graduates of distance education exhibit skills and knowledge equivalent to resident programs of a similar nature.
- (5) Bartending Schools:
- (a) Pursuant to T.C.A. § 49-7-115, all schools involved in training in the areas of management, operation, procedures or practice of dispensing alcoholic beverages or bartending shall include instruction in the problems of alcohol abuse and the effect of alcohol consumption on highway safety.
- (6) Truck Driving (CDL) Schools:
- (a) Authorized truck driving schools may advertise in the 'help wanted' section of the newspaper classifieds provided that the advertisement adheres to all other regulations given in 1540-1-2-.20 and within the advertisement it clearly indicates with specific language that this is a "school advertisement", "advertisement for training" or a "training opportunity with [school's name]".
 - (b) Advertisements may refer to truck lines or carriers by name with the written permission of that company and use language such as "training agreement with", "training contract with" or "exclusive training for [carrier's name] in Tennessee". If a school mentions or alludes to multiple training agreements with carriers, the advertisement must give a specific number and have prior approval from Commission staff. All claims related to carriers must be documented and on file at the school.
- (7) Modeling Schools:
- (a) Modeling schools that also operate a placement or talent agency must maintain clear separation in function and advertising the agency from the school.
 - (b) Talent seminars, interviews or 'talent searches' may not be used to enroll individuals in modeling schools or training.
 - (c) Schools that operate as a 'finishing school', exclusively for personal department or for enrichment may not advertise or conduct courses that imply or suggest vocational modeling or related goals.
- (8) Computer Training:
- (a) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers (closed enrollment) directly related to a sale of equipment or services are exempt from the provisions of authorization.
 - (b) Businesses offering short-term computer training in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of the Commission, courses using various

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software are offered concurrently toward a vocational goal. (e.g. word processing software offered toward secretarial goals).

- (c) Businesses offering specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation of that training in the state.
- (9) Teacher Training (K-12) or Licensing or Recertification:
- (a) The Tennessee State Board of Education or the Commission may request a dual review of any institution or business with physical presence in Tennessee offering courses related to but not limited to teacher (K-12) licensing, recertification or career ladder.
- (10) Seminars / Workshops:
- (a) Seminars or workshops of short duration that are motivational, enrichment, recreational, avocational or solely for professional enhancement as determined by Commission staff shall be considered exempt from authorization requirements.
 - (b) Upon review by Commission staff, the provider of a seminar/workshop, regardless of length, that presents the instruction in such a way to suggest a vocational end may be required to become authorized in the state, or clarify through public advertising that the seminar/workshop is in fact enrichment or recreational.

Authority: T.C.A. §§ 49-7-2003, 49-7-2005, 49-7-2008.

1540-1-2-.09 ANNUAL REAUTHORIZATION

- (1) All authorized institutions and institutions under temporary or conditional authorization must submit a reauthorization application on a form provided by Commission staff. The annual authorization year will be from July 1 through June 30. The annual application is due each October 15 and must be accompanied by an annual fee as prescribed by these rules.
- (2) Reauthorization applications postmarked after October 15 or other due date will be assessed a late renewal fee as described in Rule 1540-1-2-.25 Fees.
- (3) For all authorized institutions and institutions under temporary or conditional authorization, the reauthorization application must be accompanied by the following:
 - (a) any changes or additions to information previously submitted as part of the basis for authorization;
 - (b) copy of current catalog with major changes cited;
 - (c) the latest financial statement for the most recent institutional fiscal year as given under Financial Standards, 1540-1-2-.14 and shall include:
 - 1. a balance sheet (statement of financial position);

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2. a statement of the results of institutional operation, including gross amount of tuition, fees earned, and total refunds during the fiscal year;
- (d) a renewal fee (check or money order) made payable to the State of Tennessee for such fees as stated under these regulations.
- (e) an enrollment report for the first enrollment period on or after July 1 of the previous year through and including the last enrollment on or before June 30 of the current year;
- (f) a list of all institutional personnel including staff, instructors and agents;
- (g) summary data for the most recent institutional fiscal year on students participating in state or federal aid programs;
- (h) such other information or clarification deemed necessary by Commission staff for determination of authorization recommendations and study of institutional and/or enrollees or former enrollees.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2014.

1540-1-2-.10 REQUIRED MINIMUM STANDARDS

- (1) The institutional purpose and objectives must be stated in measurable potential outcomes in a catalog, bulletin, or brochure of the institution.
- (2) In relation to the size and scope of the institutions, it shall furnish adequate student services to fulfill the mission of the school and provide counseling and/or resources necessary to support programs and claims of the institution. Such services must have staff available to students with the knowledge and skills to effect counseling, guidance and coordination in areas such as academic standing and satisfactory progress; admissions; employment opportunities or placement; intern/externships; library; financial aid.
- (3) Administrative capability must be demonstrated in the daily operational standards at the institution. Administrative capability is the ongoing effective coordination of federal and state accreditation (where applicable) requirements in a positive and educationally enriching environment to the benefit of students. Indicators of the breakdown of administrative capability may include, but not be limited to, recurring violations in the same area; numerous student complaints during the year; failure to correct compliance issues; frequent or sudden turnover in faculty or staff; multiple findings in several different areas during a institutional site visit.
- (4) Institutions must annually report program completion rates and placement rates in a format approved by the Commission which may include accreditation standards or an average of comparable rates from Tennessee public institutions. If program completion rates are less than sixty-six (66) percent, or if average program withdrawal rates are in excess of thirty-three (33) percent, or if average placement rates are less than seventy-five (75) percent, those rates shall be monitored, reported on, compared with those of similar institutions, and explained to the extent that it can be determined whether or not the low rate is an indicator of poor educational quality.

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- (5) Liberal arts schools or professional schools that typically do not report vocational placement data may be required to report to the Commission either by testimonial, survey or by some other means that program completers have benefited from the instruction.
- (6) The maximum pupil-teacher ratios acceptable, without special permission from the Commission, are:
 - (a) lecture: 40-1;
 - (b) business laboratory: 50-1 (such as accounting, typing, shorthand);
 - (c) technical and vocational theory: 40-1;
 - (d) technical lab: 40-1 (such as computer programming, data processing);
 - (e) vocational lab: 40-1 (such as auto mechanics, drafting, air conditioning);
 - (f) class A truck cab: 4-1; and
 - (g) class B truck cab: 2-1.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006.

1540-1-2-.11 INSTITUTIONAL CATALOG

- (1) Each institution must publish a catalog or brochure (a draft copy may be provided for original application) which must include at least the following information:
 - (a) the name and address of the institution;
 - (b) identifying data, such as catalog number and publication date;
 - (c) table of contents;
 - (d) names of owners and officers, including any governing boards, and faculty with credentials for position;
 - (e) the institutional calendar, including holidays, enrollment periods and the beginning and ending dates of terms, courses, or programs;
 - (f) the institutional enrollment procedures and entrance requirements, including late enrollment, if permitted;
 - (g) the institutional attendance policy including minimum attendance requirements, the circumstances under which a student will be interrupted for unsatisfactory attendance, and the conditions under which a student may be readmitted;
 - (h) the institutional policy covering satisfactory progress with an explanation of any grading system used and a description of any probation policy and a description of the institutional system for making progress reports to students;

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- (i) the institutional policy regarding student conduct, including causes for dismissal and conditions for readmission;
- (j) a description of each program offered including objectives, costs, length, program components or course requirements, or in the case of correspondence instruction, the number of lessons;
- (k) a description of the placement assistance available and, if none, so state;
- (l) a description of the facilities and equipment used for educational programs and the address of training site;
- (m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;
- (n) the refund and cancellation policy which must describe the procedure for determining the official date of termination;
- (o) in catalogs which describe educational programs conducted in Tennessee and with enrollment contracts used by programs outside of Tennessee, a statement provided within the first four (4) pages of the catalog and on the signature page of enrollment contracts, which must read as follows:

“The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation by minimum standards concerning quality of education, ethical business practices, health and safety, and fiscal responsibility.”;

- (p) a description of the student grievance procedure, a listing of the title, address, and telephone number of the institutional employee(s) designated to receive student complaints. If the institution used a mediation clause in its enrollment agreement, the catalog must describe the steps required of the student and/or the institution to initiate the mediation process. The address and telephone number of the postsecondary staff of the Commission must be in the catalog for grievances not settled at the institutional level;
- (q) specific information pertaining to transferability of credit earned to another institution, with language sufficient to describe limitations on transfer of credit. Institutions have a responsibility to advise potential enrollees that transfer of credit is controlled by the receiving institution and that accreditation does not guarantee transferability. Suggested language is as follows:

“(name of institution) is a special purpose institution. That purpose is (fill in mission statement). This purpose does not include preparing students for further college study. Students should be aware that transfer of credit is always the responsibility of the receiving institution. Whether or not credits transfer is solely up to the receiving institution. Any student interested in transferring credit hours should check with the receiving institution directly to determine to what extent, if any, credit hours can be transferred.”

- (r) for institutions that disseminate electronic copies of catalogs, a hard copy must be available upon request.

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- (2) Use of supplemental pages must be done in a way as to ascertain that supplemental pages become an effective part of the catalog, must show an effective date, and be presented to students prior to enrollment or payment of fees.
- (3) Catalogs should be written in a way and at a level which enables prospective enrollees to make informed decisions.
- (4) Less information may be required to be included in the institutional catalog or brochure when the applicant can satisfactorily demonstrate to the Commission that some of the above are not applicable.
- (5) Full-time students should have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.

Authority: T.C.A. §§ 49-7-2002, 49-7-2006.

1540-1-2-.12 ADMISSIONS STANDARDS

- (1) The admissions policy for students must be based on the institution's objectives and must be publicly stated and administered as written. Institutions should not admit students to programs leading to licensure when the institution knows or, by the exercise of reasonable care should know that said student, would be ineligible to obtain licensure in the occupation for which they are being trained (e.g., certain prior legal convictions render one ineligible to hold certain licenses). If a student ineligible for licensure desires to enroll in such a program, regardless of license eligibility, the institution may admit such a student after the student submits, in writing for retention by the institution and review by Commission staff, a statement acknowledging such ineligibility. This provision, 1540-1-2-.12(1), is not intended to speak contrary to the institution's options to enroll students as non-credit students, auditing students or continuing education students.
- (2) Students without a high school diploma or a GED may be admitted as an ability-to-benefit student into non-degree programs that are customarily not accepted for college credit if the student has terminated secondary enrollment and is beyond the age of compulsory attendance, subject to the following conditions:
 - (a) Applicants without a high school diploma or GED shall be tested.
 - (b) An exception to these testing provisions, however, may be created for:
 1. individual applicants to non-degree programs where the following four conditions are met:
 - (i) The student does not receive federal or state financial aid.
 - (ii) The student's high school transcript is unavailable.
 - (iii) The program is short term and the costs are low.
 - (iv) institutions or programs at an institution composed exclusively of subject matter that does not lend itself to an objective test, upon request, if approved by the Commission.

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- (c) Any test administered for purposes of determining admission shall be a standardized test recognized nationally or by the U.S. Department of Education with minimally acceptable scores as referenced in the test material or by the U.S. Department of Education. In cases where a standardized test is not available, a non-standardized test developed by institutional officials with minimally acceptable scores may be approved by Commission staff.
 - (d) Tests shall be administered in a secure environment (e.g., monitors present). Tests shall not be administered in a manner inconsistent with the manner (e.g., frequency) recommended by standardized test developers. Testing policies shall be stated along with the admissions policy published in the institutional catalog.
 - (e) An agent is not allowed to administer the test, nor is anyone allowed to assist the applicant in answering the questions.
 - (f) If the admission test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student and may be charged for the remedial program on an hourly pro rata basis. The student is not obligated for the tuition and fees of the non-remedial regular program until the admission requirements are met. The minimum admission requirements for postsecondary education remain a high school diploma, GED, or a passing score on the admission exam.
 - (g) Tests administered for purposes other than the determination of admissibility are not governed by 1540-1-2-.12(2).
- (3) Institutions which admit enrollees on an ability-to-benefit basis, must submit all documents related to such admission policies to the Commission.
 - (4) Degree program admission policies must be at least the following:
 - (a) undergraduate degrees must require a high school diploma or equivalency; and
 - (b) graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.

Authority: T.C.A. § 49-7-2008.

1540-1-2-.13 ENROLLMENT AGREEMENTS AND DISCLOSURE STANDARDS

- (1) Accredited institutions that provide and administer a Title IV financial assistance program and grants will follow federal disclosure guidelines. Such institutions will not be required to duplicate any state disclosure item if that disclosure is part of federal or accreditation standards.
- (2) Institutions, prior to enrolling an individual, shall require the prospective student to sign and date a form to be placed in the student file, which is either part of the enrollment contract or a pre-enrollment checklist verifying that the student:
 - (a) toured the institution (not applicable for institutions that deliver all instruction on-line);
 - (b) received an institutional catalog;

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- (c) was given the time and an opportunity to review the institutional policies in the catalog;
 - (d) knows the length of the program for full-time and part-time students in academic terms and actual calendar time;
 - (e) has been informed of the total tuition and fee costs of the program;
 - (f) has been informed of the estimated cost of books and any required equipment purchases such as a stenography machine, computer, specialized tools, art supplies, etc.;
 - (g) has been given a copy of the institutional cancellation and refund policy;
 - (h) understands what "transferability of credits" means, and the specific limitations (if any), should the institution have articulation agreements;
 - (i) knows of their rights in a grievance situation including contacting the Tennessee Higher Education Commission by including on the form a statement in the following format:
 - 1. A statement: "I realize that any grievances not resolved at the institutional level may be forwarded to the Tennessee Higher Education Commission, Nashville, TN 37243-0830, (615) 741-5293."
- (3) Also included, shall be documentation that the student received graduation placement data exactly as presented to the Commission during the last reauthorization cycle in the following format:
- (a) A Statement: "*For the program entitled _____, I have been informed that the current withdrawal rate is __percent, or in the past twelve (12) months ___ students enrolled in this program and ___ completed this program.*"
 - (b) A Statement: "*For the program entitled _____, I have been informed that for the students who graduated, the job placement rate is __percent, or in the past twelve (12) months ___ were placed in their field of study out of ___ students who graduated from this program.*"
- (4) Liberal arts schools or professional schools that typically do not report vocational placement data may request a waiver of 1540-1-2-.13(3) above.
- (5) An enrollment contract shall include but not be limited to:
- (a) full and correct name and location of the institution;
 - (b) name, address and social security number of the student;
 - (c) date training is to begin and program length;
 - (d) full-time or part-time status of the student;
 - (e) projected date of graduation/completion as a full-time or part-time student;
 - (f) program title;

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- (g) total cost of the program, including itemized separate costs for tuition, fees, books and any required equipment purchases;
 - (h) cancellation and refund policy;
 - (i) verification that the student has received an exact signed copy of the agreement.
- (6) Institutions shall contractually guarantee total cost of tuition for twelve hundred (1,200) contact hours or one (1) calendar year from the time of enrollment for full and part time students.
 - (7) Programs less than twelve hundred (1,200) clock (contact) hours must have an enrollment contract with a set total tuition.
 - (8) Programs longer than twelve hundred (1,200) clock (contact) hours that increase tuition cost after the initial twelve hundred (1,200) hours or one (1) year period, must provide counseling related to the tuition increase.
 - (9) Tuition increases that in the opinion of the Commission are excessive, unreasonable and exceed initial disclosure to the student, may be denied and/or result in an indepth audit of the institution at the institution's expense to assure the Commission of financial stability.
 - (10) All tuition changes must be submitted on forms provided by the Commission and approved by Commission staff prior to their inception.

Authority: T.C.A. § 49-7-2006.

1540-1-2-.14 FINANCIAL STANDARDS

- (1) Institutions administering Title IV financial assistance programs will maintain all required guidelines and standards.
- (2) The Commission and its staff may share information with the Tennessee Student Assistance Corporation and other state and federal agencies as appropriate.
- (3) All institutions seeking authorization must maintain a business account with a financial institution that is federally insured in the institution's name.
- (4) The institution shall maintain financial and business practices in line with common business procedures utilizing standard accounting practices.
- (5) The institution shall maintain and be prepared to demonstrate financial resources adequate to meet the following:
 - (a) facility maintenance and overhead;
 - (b) staff and faculty payroll;
 - (c) books, supplies and/or equipment utilized by students;
 - (d) general operating costs including printing and advertising;

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- (6) Institutions shall be able to demonstrate annual financial planning through a budget. New degree granting program institutions must establish financial planning that reflects at least a three-year plan which includes anticipated income and expenses.
- (7) All authorized institutions must file each year the most recent audited financial statement, certified by an independent certified public accountant. For multi-campus institutions, or for institutions owned by one (1) parent company, an audited consolidated corporate financial statement shall be routinely required. The staff, Committee, or Commission, however, may request additional campus or institution-specific information where needed to protect the public interest. The audited income statement must be compiled for each institution, or group of institutions owned by the same company, authorized to operate under the Act; the balance sheet must reflect owner's (proprietorship, partnership, corporation, other) assets and liabilities. In the preparation of these statements, it should be noted that goodwill is not generally considered a current asset unless it is being amortized; related parties must be disclosed; related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected. It should be noted whether or not tuition revenue is recognized up front or on a pro-rata basis. Current financial statements on each site separately authorized under the Act must be filed annually. Neither the ratio of current fund revenues to current fund expenditures nor the ratio of current assets to liabilities, both site specific and corporate, where applicable, shall be less than 1:1. Institutions that have annual gross tuition revenue of \$100,000 or less may request a waiver of the audit contemplated by this section and provide the most recent financial information on forms provided by the Commission.
- (8) The institution must submit an operating statement and balance sheet to the Commission within four (4) months of the end of the institutional fiscal year. In addition, if a regular or certified audit is available, it should be submitted within four (4) months of the end of the institution's fiscal year as well.
- (9) At any time, the Commission may require a certified audit of the institution when there are questions about the institution's financial stability.

Authority: T.C.A. §§ 49-7-2006, 49-7-2015.

1540-1-2-.15 INSTITUTIONAL AND STUDENT RECORDS

- (1) Records of enrollees, completers, and placements must be sufficient to provide annual auditable reports to the Commission from the master student registration list.
- (2) A record of written student complaints must be maintained, including a copy of the complaint, subsequent documents, and a statement of the matter's disposition for a minimum of three (3) years from the conclusion of the complaint.
- (3) Financial records of the institution must be maintained and open for inspection and copying by properly authorized officials of the Commission pursuant to compliance with confidentiality laws.
- (4) Institutions administering financial aid programs must maintain a ledger and a record of financial aid administered which includes a chronological record of debits and credits which is understandable to the enrollee.

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- (5) Each institution must maintain a master student registration list, in table format, consisting of at least the following information for any person who signs an enrollment agreement financially obligating that person or makes a down payment to attend, or both:
- (a) registration date;
 - (b) name of student;
 - (c) address of student;
 - (d) telephone number;
 - (e) social security number;
 - (f) name of course or program; and
 - (g) current student status or date of dropout or completion, date of employment, employment status (i.e., employed, unemployed, disabled, or deceased), where employed, including the name, address, and telephone number of the employer.
- (6) Institutions must maintain the following documentation in each enrolled student file or folder and shall include but not be limited to:
- (a) an admissions form that provides basic information such as student name, social security number, address, telephone number, program or area of application, projected entrance date, etc., and information relevant for determination that the student meets the minimum entrance requirements of the institution, (see 1540-1-2-.12). This information may be incorporated into the enrollment contract;
 - (b) basis for admission (e.g., name and address of high school); if a high school diploma or the equivalent is required, for high school graduates or those with high school equivalency, the institution shall have on file an official copy of the high school transcript, or the equivalency certificate with scores which meet the state's minimum for passing; if an ability to benefit basis, the institution shall have on file official records of such; or if on an exception basis, documentation of such;
 - (c) enrollment disclosure statement or checklist as given in these regulations (unless incorporated in the enrollment agreement);
 - (d) a complete enrollment agreement as given in these regulations;
 - (e) an up-to-date educational transcript for each enrollee in a form that permits easy and accurate review by the student, transfer institutions, potential employers and authorized state or federal agencies. Transcripts must indicate the name and address of the institution and be signed by an appropriate institutional officer(s), (i.e., registrar, president, dean). The transcript shall be a permanent record of the student's progress and academic performance, which shall include, but not be limited to:
 - 1. full and complete name of the institution;
 - 2. full name of student;

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3. social security number;
 4. program or department of enrollment;
 5. status of student (e.g. active; withdrawal; probation; leave of absence; graduate etc.);
 6. an official date recorded for all student withdrawals and graduations;
 7. beginning date or academic term with the year for each course attempted, with a grade posted at the completion of the term or discrete contact hours for that course;
 8. as applicable to the type of institution, credit hours earned or contact hours completed;
 9. actual name of each course (subject) with code numbers as given in institutional catalog;
 10. indication of credits given by transfer from another institution or credit by exam;
 11. cumulative Grade Point Average (GPA);
 12. date the transcript was last updated and/or printed;
 13. appropriate signature(s);
- (f) An exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress.
- (7) The institution may maintain the above information by electronic storage provided that there is at least one complete updated 'backup' copy in a separate system or location, Commission staff and other authorized groups have complete and easy access to review student transcripts during site visits and the institution can print out any or all transcripts upon request.
- (8) For institutions with programs with no separation of courses by subject content, an exact copy of the certificate of completion may be placed in the student file in lieu of an academic transcript.
- (9) Institutions must maintain a written record of the previous training and education of the applicant student which clearly indicates the appropriate credit which has been given by the institution for previous training and education.

Authority: T.C.A. §§ 49-7-2006, 49-7-2016.

1540-1-2-.16 PERSONNEL AND INSTRUCTOR QUALIFICATIONS

- (1) Commission staff approval is necessary for all instructors and administrative personnel. All instructors and administrative personnel qualifications must be submitted, on forms provided by the Commission staff, no later than ten (10) days after new staff have been hired.

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- (2) Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students.
- (3) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities.
- (4) Administrative personnel generally encompasses individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to, titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel, but shall be included for reporting purposes on re-authorization forms annually.
- (5) Administrative personnel at authorized institutions must be graduates of an accredited college or university or have sufficient background and training in his/her area of responsibility.
- (6) Each institution must designate one (1) person as the institutional director, who is responsible for the institution's program, the organization of classes, maintenance of the institutional facilities, maintenance of proper administrative records, signing documents pertaining to authorization and all other administrative matters related to authorization.
- (7) Institutional owners or the controlling board must ensure that each authorized site has a institutional director on that location for at least fifty (50) percent of the operational time each week the school has students present unless other provisions have been approved by the Commission staff.
- (8) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and these regulations including but not limited to advertising, records, contracts, required benchmarks, annual deadlines and fee payments.
- (9) The institutional director at authorized institutions must be a graduate of an accredited college or university with at least one year experience in administration, institutional management, or the total years of administration/institutional management experience/higher education shall equal at least five years.
- (10) Directors of authorized institutions must maintain on site a separate current copy file of materials filed with the Commission as part of their current authorization which includes the application, documentation of appropriate bonding, financial reports, agent permit documentation, and fire and safety reports.
- (11) If the institution employs a director of education, that director shall meet the same requirements as an instructor as specified in these rules and shall also have either one (1) year supervisory experience or a relevant post-bachelor's degree.
- (12) Minimum Requirements for Instructors of all authorized institutions:
 - (a) Instructors must provide evidence of experience and training higher than the level to be taught.
 - (b) Instructors in a trade related or specific skill areas must have documented proficiency and practical applied experience in that trade or skill.

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- (c) An instructor must hold the appropriate certificate, license, or rating if the subject is a trade requiring certificate, license, or rating.
- (d) An instructor must be qualified by education and experience/background demonstrably higher than the level to be taught and must meet the following qualifications as minimum requirements:
 - 1. Minimum for doctorate level:
 - (i) Hold a doctorate degree from a college or university judged to be appropriate by the Commission and either:
 - (I) a doctorate degree with a major or concentration in the subject area to be taught; or
 - (II) a doctorate not in the subject area but with a minimum of one (1) year of practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours of doctoral level courses in the subject.
 - 2. Minimum for masters level:
 - (i) Hold a masters or higher degree from a college or university judged to be appropriate by the Commission and either:
 - (I) a masters or higher degree with a major or concentration in the subject area to be taught; or
 - (II) a masters or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in graduate level courses in the subject.
 - 3. Minimum for a baccalaureate level:
 - (i) Hold a baccalaureate or higher degree from a college or university judged to be appropriate by the Commission and either:
 - (I) a baccalaureate or higher degree with a major or concentration in the subject area to be taught; or
 - (II) a baccalaureate or higher degree not in the subject area but with a minimum of one (1) year of demonstrated practical experience within the last five (5) years in the subject area to be taught and completion of nine (9) semester hours or twelve (12) quarter hours in the subject. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.
 - 4. Minimum for an associate level:
 - (i) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:

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- (I) an associate degree with a concentration in the subject to be taught and one (1) year of practical experience; or
 - (II) an associate degree not in the subject area but with a minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester/quarter hour requirements.
5. Minimum for diploma and certificate level:
- (i) Hold a high school diploma or GED and a certificate of completion from a post-secondary institution judged to be appropriate by the Commission in a relevant subject area and a minimum of three (3) years of practical experience within the last seven (7) years in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for the postsecondary educational requirements.
- (13) Evidence of qualifiable education, experience, or training (including official transcripts) for each instructor must be maintained on-site at the location.
- (14) The executive director may approve a variance from these specific qualifications with sufficient justification and an assurance that the program quality will not be lessened. In such a situation the institutional director must submit written justification and documentation with the personnel form submission. In addition the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to the Commission staff.
- (15) Instructors shall be evaluated at least annually by students, as well as the director or chief academic/instructional officer, and the institution shall have on file at the campus evidence of such evaluations.
- (16) Agents and Recruiters:
- (a) Institutional agents as defined by the Act and these regulations must submit an application, on forms provided by the Commission have authorization and an agent permit and secure the appropriate bond prior to any solicitation. The application must be accompanied by the following:
 - 1. recommendations by two reputable persons certifying that the applicant is of good character and reputation;
 - 2. a check payable to the State Treasurer of Tennessee as required under these regulations;
 - 3. a surety bond of five thousand dollars (\$5,000.00) per agent of an out-of-state institution or as specified in 1540-1-2-.07 of these rules; and
 - 4. certification by the institutional director that the applicant will be directed to act in accordance with these regulations.

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- (b) Agent permits must be renewed every year. The expiration date of a permit is one (1) year from the date of issue or termination of employment whichever occurs first.
- (c) Agents must have separate permits to represent separate institutions. Mutual agreement by institutions is required.
- (d) All agents must verify by signature that they have read and are familiar with rules on advertising and solicitation and must verify intent to follow rules as set forth in Fair Consumer Practices.
- (e) Institutional directors, not marketing offices, are responsible for actions of agents.
- (f) The agent shall be under the control of the institution, and the institution is responsible for any representations or misrepresentations, expressed or implied, made by the agent.
- (g) Any student solicited or enrolled by a non-licensed agent is entitled to a refund of all monies paid and a release of all obligations by the institution. Any contract signed by a prospective student as a result of solicitation or enrollment by a non-licensed agent shall be unenforceable at the option of the student. In cases where the institution is willing to honor the contract and the student wishes the contract enforced, it can be. However, in cases where the contract has been fully executed between the institution and the student, the student would not be entitled to a refund solely because he or she was solicited by a non-licensed agent.
- (h) An agent is prohibited from inappropriate activities in procuring enrollees including, but not limited to the following:
 - 1. administering the admission test;
 - 2. advising students about financial aid other than informing the student of the general availability of financial assistance;
 - 3. giving false, misleading, or deceptive information about any aspect of the institution's operation, job placement, or salary potential;
 - 4. representing that a program has sponsorship, approval, characteristics, uses, benefits, or qualities which it does not have;
 - 5. soliciting enrollments in a program which has not been approved by the Commission.
- (i) An agent must display the current permit to all prospective students and other interested parties.

Authority: T.C.A. §§ 49-7-2002, 49-7-2006, 49-7-2009, 49-7-2011.

1540-1-2-.17 CANCELLATION AND REFUND POLICY

- (1) All authorized institutions must comply with the laws and regulations of the local, state, and federal government concerning cancellations and refunds and must revise all policies and practices if laws and regulations are revised.

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- (2) For purposes of this section, the period of enrollment is defined not to exceed one (1) year.
- (3) Each institution authorized by the Commission to operate or to solicit students in Tennessee shall have a fair and equitable refund policy which governs credits or repayments of unearned tuition, fees, and other institutional charges assessed a student when:
 - (a) The student does not register or fails to begin classes for the period of enrollment for which he or she was charged; or
 - (b) The student withdraws, drops out, is expelled from the institution, or otherwise fails to complete the program on or after his or her first day of class of the period of enrollment for which he or she was charged.
- (4) The institution's refund policy shall be deemed by the Commission to be fair and equitable if:
 - (a) All or a portion of the tuition, fees, and other institutional charges assessed the student were paid or to be paid by student assistance programs sponsored by one or more governmental or private agencies or organization, including employer provided financial assistance, and the institution, as a condition of establishing eligibility for its students to participate in such programs, is required to adhere to a refund policy prescribed by the sponsor of the student assistance; or
 - (b) For students not affected by subparagraph (4a), the institution's refund policy produces a refund which equals or exceeds the amount which would be calculated by application of the following procedures:
 1. If a student withdraws from the institution on or before the first day of classes, or fails to begin classes, the refund shall equal the sum of all amounts paid or to be paid by or on behalf of the student for the period of enrollment, less an administrative fee of one hundred dollars (\$100.00);
 2. If, after classes have commenced and before expiration of ten (10) percent of the period of enrollment for which he or she was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal seventy-five (75) percent of all amounts paid or to be paid by or on behalf of the student for the period, less administrative fee of one hundred dollars (\$100.00);
 3. If, after expiration of ten (10) percent of the period of enrollment for which he or she was charged, and before expiration of twenty-five (25) percent of the period, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the refund shall equal twenty-five (25) percent of all amounts paid or to be paid by or on behalf of the student for the period, less administrative fee of one hundred dollars (\$100.00);
 4. If, after expiration of twenty-five (25) percent of the period of enrollment for which he or she was charged, a student withdraws, drops out, is expelled, or otherwise fails to attend classes, the student may be deemed obligated for one hundred (100) percent of the tuition, fees and other charges assessed by the institution; or
 - (c) For students not affected by subparagraph (4a), the institution may adopt and utilize the federal statutory pro-rata refund method for a student whose last day of attendance occurs prior to sixty (60) percent of the period of enrollment, or such later point in time as the institu-

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tion may select and be published in the institutional catalog. After completion of sixty (60) percent of the period of enrollment the student may be deemed obligated for one hundred (100) percent of the tuition, fees and other charges assessed by the institution; or

- (d) For students not affected by subparagraph (4a), the institution may propose a refund policy for approval by the executive director, if the policy can be demonstrated as a whole more favorable than subparagraph (b); or
 - (e) For a student enrolled in a program at a non-accredited institution, which is serial in nature, in which classes are offered one (1) at a time, that cannot complete the individual class(es) that are part of a program for which the student was charged, the institution must refund the amounts paid or to be paid by or on behalf of the student for such individual class(es); or
 - (f) For a student who cannot complete one (1) or more classes because the institution discontinued such class(es) during a period of enrollment for which the student was charged, the institution refunds the sum of all amounts paid or to be paid by or on behalf of the student for such class(es).
- (5) When computing refunds pursuant to the policies contained in subparagraph 2(b), (c), and (d), the last day of attendance for a student shall be one (1) of the following:
- (a) The date on the expulsion notice if a student is expelled from the institution; or
 - (b) The date the institution receives a written notice (including a signed drop form) of withdrawal from a student; or
 - (c) When no written notice of withdrawal is given, the institution shall use the last day of attendance as the date of withdrawal; or
 - (d) Fails to return from an approved Leave of Absence (LOA).

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013.

1540-1-2-.18 PROHIBITED ACTS

- (1) Grant or offer to grant or imply through advertising, promotions or other representations that educational credentials or credits may be obtained through any postsecondary institution, business, person or educational service unless so authorized in the state.
- (2) No institution seeking, holding or required to hold authorization under the Act may call itself a university or use university in its name, unless prior to authorization in Tennessee such an institution has been so approved by a regional accrediting body recognized by the U. S. Secretary of Education and the U. S. Department of Education.
- (3) No entity may publicize, promote or imply an accreditation that is not recognized by the U. S. Department of Education.

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- (4) No institution seeking, holding or required to hold authorization under the Act or these regulations may publicize, promote or imply an academic, vocational, professional or educational certification from any entity without the approval of the Commission.
 - (a) Certifications held out to students that imply a special status, licensing or credential beyond the authorized award by the institution whether offered within the school or by an independent entity, where such certifications are not recognized or required by: the state and its laws or for employment purposes within the industry/profession, will require the approval of the Commission.
- (5) For consumer disclosure and truth in advertising to all Tennessee citizens, an educational service, business or person must clearly identify the nature of the educational service offered and may not use broad language or phrases to imply that the service is a school, can award credits, degrees or other educational credentials.
- (6) Non-accredited institutions shall not accept funds for tuition prior to ten (10) business days of the scheduled start date of the class or program.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013.

1540-1-2-.19 FAIR CONSUMER PRACTICES AND STUDENT COMPLAINTS

- (1) No discounting is allowed. All students must be charged the same price for all programs and classes regardless of their method of payment.
- (2) All institutions authorized by the Commission and their representatives shall be required to operate in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the school are accurate, such that students can make appropriate decisions concerning their investment of time and money.
- (3) Fair consumer practices means honesty, fairness and disclosure to students in the areas of: recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary schools and also includes misrepresentation concerning competitor institutions.
 - (a) Information regarding fair consumer practices shall be included in the institution's usual publications such as the catalog and institution brochures and must always be provided by institutional recruiters and agents.
 - (b) Accredited institutions may apply accreditation standards of fair consumer practices.
- (4) Findings by Commission staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure or discrepancies between verbal and written information, intimidation or coercion may require corrective public announcements or in the opinion of the Commission significant deviation from fair consumer practices may result in penal fines and/or conditional authorization or revocation of agent or institutional authorization.

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- (5) Institutions authorized under these rules must report to the Commission in writing within thirty (30) working days any unresolved written complaints about their operation of which they are knowledgeable (including media accounts of complaints). Such complaints shall be resolved or determined to be irresolvable by the institution within thirty (30) working days of the receipt of the written complaint at the Commission offices. Complaints shall be considered as a factor in the decision when authorization to operate or continue in operation is sought.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013.

1540-1-2-.20 ADVERTISING AND SOLICITATION

- (1) Institutions authorized by the Tennessee Higher Education Commission may use the authorization in advertising, promotional material and on letterhead stationery using the following: "(name of institution) is authorized for operation by the Tennessee Higher Education Commission." The entire statement must be used with the same size font and font type of print.
- (2) The Tennessee Higher Education Commission logo may not be used in any institution's advertising, brochures, telecommunications or institutional material.
- (3) Institutions authorized by the Commission that have presence, advertise or offer instruction via Internet, world wide web, or other electronic telecommunication means, must state on the first 'page'(as registered with standard web/Internet search engines) viewed by the consumer, "[name of institution] is authorized for operation as a postsecondary educational institution by the Tennessee Higher Education Commission".
 - (a) In the case of an internet site, within the required statement given above, "Tennessee Higher Education Commission" must be an electronic link to the agency's web site at <www.state.tn.us/thec>.
- (4) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified and is an appropriately recognized accrediting agency listed by the United States Department of Education.
- (5) No statement shall be made that the institution or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate or letter of approval issued by the approving agency of the state or federal government.
- (6) All advertisements, except for radio, placed by an institution or its representatives seeking prospective students, must include and clearly indicate the full and correct name of the institution, its address, and the city where the institution is located; radio advertisements must include the full and correct name of the institution and the city and state where the institution is located.
- (7) Institutions that advertise in formats that will be in the public domain for long periods (such as the telephone book directory), where such advertising, if in noncompliance, cannot be rewritten or retracted may be fined in accordance with the Act for each day, week or month the advertisement is in active circulation. Such fines shall not exceed ten thousand dollars (\$10,000.00).
- (8) Printed bulletins or other promotional information must emphasize training available rather than amount and kinds of aid available.

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- (9) Promotion of the institution must be based on education programs, not student aid promotion, number of jobs available or educational credentials.
- (10) No dollar amount or amounts will be quoted in any advertisement as representative or indicative of the earning potential of graduates without prior approval by Commission staff.
- (11) Institutions authorized to offer specialized courses or subjects not available to other institutions shall not advertise such courses in such manner to diminish the value and scope of courses offered by other institutions.
- (12) Institutions or representatives shall not use a photograph, cut engraving, or illustration in bulletins, sales literature, or otherwise, in such a manner as to convey a false impression as to size, importance, or location of the institution, equipment, and facilities associated with that institution.
- (13) Institutions or representatives shall not use endorsements, commendations, or recommendations by students in favor of an institution except with the consent of the writer and without any offer of financial compensation, and such material shall be kept on file and made a permanent record for the institution, and such endorsements shall bear the actual name or professional name of the student.
- (14) Institutions or representatives shall not make deceptive statements concerning other institutional activities in attempting to enroll students.
- (15) Every display-type newspaper advertisement, or other advertisement placed by the institution or its representatives, through direct mail, radio, television, or directories seeking prospective students, must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.
- (16) Classified advertising seeking prospective students must appear under "*instruction*," "*education*," "*training*," or a similarly titled classification and shall not be published under any "*help wanted*" or "*employment*" classification. (See special school section 1540-1-2-.08(6) for truck driving).
- (17) No advertisements of any type shall use the word "*wanted*," "*help wanted*," or the word "*trainee*," either in the headline or the body of the advertisement, nor shall any advertisement indicate in any manner that the institution has or knows of jobs or employment of any nature available to prospective students; only "*placement assistance*," if offered, may be advertised.
- (18) No statement or representation shall be made that students will be guaranteed employment while enrolled in the institution or that employment will be guaranteed for students after graduation, nor shall any institution or representative thereof falsely represent opportunities for employment upon completion of any course of study.
- (19) No institution shall use job placement percentages or statistics in advertisements or recruitment materials except by written permission of the Commission.
- (20) Should a placement service be advertised, adequate records shall be maintained by those institutions advertising such placement service which will reflect employment data. However, no institution shall advertise as an employment agency under the same or a confusingly similar name or at the same location of the institution. No representative shall solicit students for an institution through an employment agency.

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- (21) The Commission staff at any time may require that an institution furnish proof to the Commission of any of its advertising claims. If proof acceptable to the executive director of the Commission cannot be furnished, a retraction of such advertising claims published in the same manner as the claims themselves, must be published by the institution and continuation of such advertising shall constitute cause for suspension or revocation of its certificate of authorization.
- (22) If student tuition loans are available at the institution, the institution may advertise them only with the language "*student tuition loans available*" in type no larger than that used for the name of the institution. This does not preclude disclosure of the institution's eligibility under the various state and federal loan programs.
- (23) Promotional materials or agent solicitation practices must not state or imply that programs are available on a free tuition basis.
- (24) No statement shall be made by an institution or its representatives that the programs and/or courses or tests are transferable to another institution without current documentation by an authorized official of the receiving institution.
- (25) Claims by institutions in advertisements must be substantiated in Commission files prior to such claim.
- (26) Claims must not be vague. For example, "*award winning*" institution should include full name of award in advertisement and specify year of any such attainment and source of award.

Authority: T.C.A. §§ 49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013.

1540-1-2-.21 AUTHORIZATION STATUS

- (1) Temporary Authorization:
 - (a) A temporary authorization may be issued following:
 1. staff review of the completed application for authorization based on these rules;
 2. site visitation of the proposed institutional facilities as deemed necessary and feasible by the Commission staff;
 3. recommendation from the Committee on Postsecondary Education Institutions; and;
 4. favorable Commission action.
 - (b) Institutions satisfactorily, as deemed by the Commission, completing the pre-operation requirements will be notified by letter of temporary authorization. Temporary authorization must be maintained for at least twenty-four (24) months prior to eligibility for regular authorization on the basis of public Commission action.
 - (c) Temporary authorization allows ninety (90) days for initiation of actual operation and enrollment of students and unless satisfactory reasons are forwarded by letter from the applicant for not beginning operation and enrolling students, the temporary authorization may be withdrawn. All new institutions must submit a status report ninety (90) days after receipt of

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temporary authorization and submit annual reports on the annual reporting schedule which requires annual fees and reports due October 15 each year.

(2) Regular Authorization:

- (a) Institutions must be reauthorized annually on forms supplied by the Commission staff.

(3) Conditional Authorization:

- (a) A conditional authorization to operate is the issuance of authorization to operate, but with additional conditions, e.g., reporting requirements, on the meeting of certain performance standards, securing new or additional bonds, authorization to operate for a limited period of time such as during change of ownership or for the purpose of teaching out existing students. Such conditional authorization may be issued when deemed necessary to protect the public interest.
- (b) As an alternative to revocation of authorization (c.f. T.C.A. § 49-7-2010, as amended), by making conditional its authorization to operate, the executive director may suspend or cause to cease any part of institutional activity such as enrolling additional students, advertising, or conducting specific classes or programs. Such cessation shall remain in effect until conditions precipitating the suspension of the activity are corrected with preventive measures in place and Commission staff has completed all related reviews and investigations.
- (c) At the discretion of the executive director, the institution may be afforded the opportunity to "show cause" why a conditional authorization should not be imposed.
- (d) An institution may voluntarily request conditional authorization including suspension of the operation, rather than expose the institution to adverse action or loss of authorization, for situations such as unexpected loss of lease and training site; extended travel or sabbatical. Voluntary suspension and the time period involved must be approved by Commission staff.
- (e) Nothing in this section shall be construed to absolve institutions of their educational and financial obligations to currently enrolled students.

(4) Revocation of Authorization:

- (a) Revocation of authorization is the immediate and complete withdrawal of the institution's authorization to enroll, advertise or operate a postsecondary educational institution in the state.
- (b) Grounds for immediate revocation of authorization to operate shall include but not be limited to:
 - 1. loss of authorized instructional site without immediate notification to the Commission;
 - 2. a principal party, owner or administrator involved with the institution who has ever been associated with a postsecondary educational institution that ceased operation with resulting loss of time or money for enrollees or had institutional authorization to operate in a state revoked or had a felony conviction involving moral turpitude, fraud or a capitol crime;

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3. a pattern of deceptive practices which include: hiding of any institutional records or documents; manipulation, alteration or falsification of materials required under the Act and these regulations which impugns administrative capability, fair consumer practices or operational standards;
 4. failure to correct any situation that resulted in a show cause or conditional authorization within a reasonable time period to be determined by the executive director;
 5. disregard for any specific directive issued by the Commission or the executive director;
 6. failure to pay required fees, penalties or fines;
 7. closing an institution without proper notification to the Commission.
 8. knowledgeable or demonstrated pattern of deceptive solicitation.
- (c) Revocation of authorization shall not relieve an institution of complete compliance with the requirements in these regulations applicable to an institution closing or ceasing operation, including but not limited to refunds to students, arranging instructional teach-outs and securing the disposition of student records.

Authority: T.C.A. §§ 49-7-2004, 49-7-2005, 49-7-2008, 49-7-2010.

1540-1-2-.22 CAUSES FOR ADVERSE ACTION

- (1) The Commission or executive director in the interest of the public welfare, consumer protection and statutory responsibility, may assess fines under this part of five hundred dollars (\$500.00) per day per violation, revoke, deny or change the status of any permit or certificate of authorization under the process as given in 1540-1-2.02(2)(e) for any one or combination of the following causes:
- (a) disregard of provisions in the Act and/or these regulations;
 - (b) willful violation of any commitment made in an application for a certificate of authorization or reauthorization;
 - (c) presenting to the general public, students or prospective students information that violates Fair Consumer Practices (1540-1-2-.19) as outlined in these regulations;
 - (d) advertising, recruiting or operating a group of classes or program that has not been authorized by the Commission;
 - (e) failure to provide or maintain premises and/or equipment in a safe and sanitary condition as required by laws, regulations, or ordinances applicable at the location of the institution;
 - (f) failure to provide and maintain adequate faculty and/or staff;
 - (g) failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered or to retain a sufficient and qualified instructional and administrative staff;

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- (h) conducting instruction at a site which has not been authorized by the Commission;
- (i) failure to correct findings resulting from an on-site inspection or review of institutional materials;
- (j) demonstrable pattern of coercion, threats or intimidation by institutional personnel to students or other institutional personnel;
- (k) failure to advise Commission about significant factors, such as:
 - 1. financial difficulties sufficient to affect program quality;
 - 2. significant staff changes in a short period of time;
 - 3. change of ownership;
 - 4. outcomes of audits by other government agencies;
 - 5. any factor or clearly developing factor that could alter basis for authorization;
 - 6. loss or lowering of accreditation status;
 - 7. legal action against the Tennessee authorized school.
- (2) Repeated and/or consistent violations of the Act or these regulations, particularly in the same areas such as advertising, fair consumer practices or operational standards may be grounds for conditional or revocation of authorization in addition to fines.
- (3) Any action by the Commission under this rule shall be in conformance with T.C.A. § 49-7-2010(c). All Commission actions are subject to due process provisions of the Tennessee Uniform Administrative Procedures Act (T.C.A. §4-5-101 - §4-5-311).

Authority: T.C.A. §§ 49-7-2005, 49-7-2010.

1540-1-2-.23 INSTITUTIONAL CLOSURE

- (1) When an authorized postsecondary educational institution proposes to discontinue its operation, such institution shall notify the Commission staff within twenty-four (24) hours of that decision and shall submit to Commission staff within three (3) days (or other deadline established by Commission staff) a plan to fulfill all obligations given below. Such plan shall include but not be limited to:
 - (a) Anticipated date to terminate teaching activity;
 - (b) Ending date of present term;
 - (c) A listing by name of all students in all programs. Such list shall include a student's social security number, address, and phone number, program enrolled in, and estimated graduation dates;

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- (d) The status of all current refunds due (the amount of unearned tuition paid by each student and for which the institution is obligated);
 - (e) A verified agreement with one or more local institutions able to provide sound education to all students in all programs;
 - (f) Disposition and servicing of all student records as required by T.C.A. § 49-7-2016.
 - (g) A request for conditional authorization to operate where required.
 - (h) Completion of obligations as designated by Commission staff by established deadlines.
 - (i) Submission of any information or materials related to the closure requested by staff.
 - (j) Demonstration that current educational obligations by the institution will be met on behalf of the presently enrolled students.
- (2) The institution which proposes to cease operations shall maintain sufficient and qualified faculty, staff, and equipment to teach all subjects to all currently enrolled students, regardless of the size of the class, until such time as the institution closes.
- (3) Should the institution fail to make arrangements satisfactory to the executive director for the completion of the programs in which the currently enrolled students are enrolled and/or for the reimbursement of unearned tuition and fees, the institution shall be subject to fines as stipulated in T.C.A. § 49-7-2017.
- (4) Institutions that close without proper notification to the Commission or that fail to comply with closure obligations given in this section (1540-1-2-23) may be deemed retroactively by the executive director to have had the institutional authorization officially revoked. Such a revocation status shall be maintained as part of the Commission closure file on that institution and any individual(s) directly involved, including, but not limited to, the director, owner(s) and/or board chair.
- (5) Student Completion of Education (“Teachouts”):
- (a) The Executive Director may approve other institutions which are authorized under T.C.A. §§ 49-7-2001, et seq. or exempt institutions to teachout students who were currently enrolled in an institution which ceases operation. An approved teachout institution shall:
 - 1. offer the course of study or similar course of study as those offered at the closed institution;
 - 2. exist or be provided in the same or reasonable geographic area as that in which the closed institution existed;
 - 3. provide the student the opportunity to complete his/her program at no additional cost other than that which the student originally contracted at the closed institution;
 - 4. accept any and all credits earned at the closed institution;
 - 5. not reduce total course hours required for the student to graduate.

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- (b) If the closed or closing institution fails to provide an acceptable plan to the executive director, the Commission staff may work toward establishing teachout arrangements with other authorized institutions.
 - (c) Teachout plans may involve other institutions or be carried out by the terminating institution as circumstances may dictate.
 - (d) The teachout plan requirement is intended to supplement, not supplant, the provisions concerning the disposition of records when an institution closes, as indicated in T.C.A. § 49-7-2016.
- (6) Disposition of Records:
- (a) Any institution ceasing operation must secure student educational transcripts by an arrangement with an authorized institution or make them available to the Commission.
 - (b) When academic transcripts from closed institutions are prepared for delivery to the Tennessee Higher Education Commission, such academic records shall be sorted and separated by year, in alphabetical order, and physically contained in boxes fifteen (15) inches long, twelve (12) inches wide, ten (10) inches high with tops and with handles, consistent with State of Tennessee Archives regulations.
 - (c) Financial aid records shall be sorted and separated by year, in alphabetical order, and physically contained in boxes fifteen (15) inches long, twelve (12) inches wide, ten (10) inches high with tops and with handles, consistent with State of Tennessee Library and Archives regulations.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2016.

1540-1-2-.24 TUITION GUARANTY FUND (TGF)

- (1) 'Tuition guaranty fund' or 'TGF' or 'fund' means the tuition guaranty fund created by T.C.A. § 49-7-2018.
- (2) All authorized institutions must pay into the Tuition Guaranty Fund for four (4) consecutive years.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2018.

1540-1-2-.25 FEES

- (1) All fees collected pursuant to the provisions of this part shall be deposited in the state treasury as a special agency account to administer the provisions of this part.
- (2) The Commission is authorized to adjust fees annually hereafter based on the intent to collect revenues sufficient to cover the cost of this regulatory function (e.g. travel, employee costs, legal costs, expert fees).

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- (3) The following is the authorization fee schedule for the Division of Postsecondary School Authorization:

(a) Initial Authorization Application	\$2,500
Each Proposed Program	300
(b) Authority to Grant Degrees	1,000
(c) New Programs	300
(d) Agent Fee In-State	100
(e) Agent Fee Out-of-State	200
(f) Change of Address	300
(g) Change of Institutional Name	300
(h) Non-compliance Fines (per day, per violation)	500

- (4) Reauthorization fees are based upon an in-state institution's annual gross tuition revenue collected from July 1st to June 30th of the previous year. Out-of-state institutions' reauthorization fees shall be a flat fee.

- (a) Institutional Reauthorization Fees (In-State) Institutions that have an authorized site in Tennessee

1.	\$0	\$100,000	\$350
2.	100,001	200,000	700
3.	200,001	300,000	1,050
4.	300,001	400,000	1,400
5.	400,001	500,000	1,750
6.	500,001	600,000	2,100
7.	600,001	700,000	2,450
8.	700,001	800,000	2,800
9.	800,001	900,000	3,150
10.	900,001	1,000,000	3,500
11.	1,000,001	1,100,000	3,850
12.	1,100,001	1,200,000	4,200
13.	1,200,001	1,300,000	4,400
14.	1,300,001	1,400,000	4,600
15.	1,400,001	1,500,000	4,800
16.	1,500,001	1,600,000	5,000
17.	1,600,001	1,700,000	5,200
18.	1,700,001	1,800,000	5,400
19.	1,800,001	1,900,000	5,600
20.	1,900,001	2,000,000	5,800
21.	2,000,001	2,100,000	6,000
22.	2,100,001	2,200,000	6,200

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23.	2,200,001	2,300,000	6,400
24.	2,300,001	2,400,000	6,600
25.	2,400,001	2,500,000	6,800
26.	2,500,001	2,600,000	7,000
27.	2,600,001	2,700,000	7,200
28.	2,700,001	2,800,000	7,400
29.	2,800,001	2,900,000	7,600
30.	2,900,001	3,000,000	7,800
31.	3,000,001	3,100,000	8,000
32.	3,100,001	3,200,000	8,200
33.	3,200,001	3,300,000	8,400
34.	3,300,001	3,400,000	8,600
35.	3,400,001	3,500,000	8,800
36.	3,500,001	3,600,000	9,000
37.	3,600,001	3,700,000	9,200
38.	3,700,001	3,800,000	9,400
39.	3,800,001	3,900,000	9,600
40.	3,900,001	4,000,000	9,800
41.	4,000,001	4,100,000	10,000
42.	4,100,001	4,200,000	10,200
43.	4,200,001	4,300,000	10,400
44.	4,300,001	4,400,000	10,600
45.	4,400,001	4,500,000	10,800
46.	4,500,001	4,600,000	11,000
47.	4,600,001	4,700,000	11,200
48.	4,700,001	4,800,000	11,400
49.	4,800,001	4,900,000	11,600
50.	4,900,001	5,000,000	11,800
51.	5,000,001	5,100,000	12,000
52.	5,100,001	5,200,000	12,200
53.	5,200,001	5,300,000	12,400
54.	5,300,001	5,400,000	12,600
55.	5,400,001	5,500,000	12,800
56.	5,500,001	5,600,000	13,000
57.	5,600,001	5,700,000	13,200
58.	5,700,001	5,800,000	13,400
59.	5,800,001	5,900,000	13,600

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60.	5,900,001	6,000,000	13,800
61.	6,000,001	6,100,000	14,000
62.	6,100,001	6,200,000	14,200
63.	6,200,001	6,300,000	14,400
64.	6,300,001	6,400,000	14,600
65.	6,400,001	6,500,000	14,800
66.	6,500,001	6,600,000	15,000
67.	6,600,001	6,700,000	15,200
68.	6,700,001	6,800,000	15,400
69.	6,800,001	6,900,000	15,600
70.	6,900,001	7,000,000	15,800
71.	7,000,001	7,100,000	16,000
72.	7,100,001	7,200,000	16,200
73.	7,200,001	7,300,000	16,400
74.	7,300,001	7,400,000	16,600
75.	7,400,001	7,500,000	16,800
76.	7,500,001	7,600,000	17,000
77.	7,600,001	7,700,000	17,200
78.	7,700,001	7,800,000	17,400
79.	7,800,001	7,900,000	17,600
80.	7,900,001	8,000,000	17,800
81.	8,000,001	8,100,000	18,000
82.	8,100,001	8,200,000	18,200
83.	8,200,001	8,300,000	18,400
84.	8,300,001	8,400,000	18,600
85.	8,400,001	8,500,000	18,800
86.	8,500,001	8,600,000	19,000
87.	8,600,001	8,700,000	19,200
88.	8,700,001	8,800,000	19,400
89.	8,800,001	8,900,000	19,600
90.	8,900,001	9,000,000	19,800
91.	9,000,001	9,100,000	20,000
92.	9,100,001	9,200,000	20,200
93.	9,200,001	9,300,000	20,400
94.	9,300,001	9,400,000	20,600
95.	9,400,001	9,500,000	2,0800

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96.	9,500,001	9,600,000	21,000
97.	9,600,001	9,700,000	21,200
98.	9,700,001	9,800,000	21,400
99.	9,800,001	9,900,000	21,600
100.	9,900,001	10,000,000	21,800
101.	10,000,001	And up	22,000 + .01% of gross tuition over \$10,000,001

- (b) Institutional Reauthorization Fees (Out-of-State) Institutions recruiting Tennessee students to an out-of -state location shall be set at twenty-five hundred dollars (\$2,500.00).
 - (c) Late reauthorization fee (in addition to regular reauthorization fee) five hundred dollars (\$500.00).
- (5) If an institution withdraws its pending application as a new institution, renewal applicant, or a new program within three (3) working days from receipt, or prior to staff review and/or a site visit, then all fees assessed shall be refunded. After three (3) days and once staff review begins the following shall apply:
- (a) For in-state institutions making initial application, the Commission may retain fifty (50) percent of the assessed fees if staff has reviewed the submitted materials. Once the site visit has been conducted, no refund of assessed fees is possible.
 - (b) For out-of-state institutions making initial application, the Commission may retain one hundred (100) percent of the assessed fees if staff has reviewed the submitted materials.
 - (c) Any institution that voluntarily or involuntarily defers an application before the Committee and fails to complete the application process in the established time deadline given under Institutional Applications (1540-1-2-.07) shall forfeit all fees paid.
 - (d) Any other fee collected is nonrefundable once Commission staff has performed the associated review or work related to that fee.

Authority: T.C.A. §§ 49-7-2005, 49-7-2014, 49-7-2017.

The proposed rules set out herein were properly filed in the Department of State on the 9th day of August, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 29th day of December, 2005. (08-12)

PROPOSED RULES

**THE TENNESSEE DEPARTMENT OF TRANSPORTATION - 1680
MAINTENANCE DIVISION**

**CHAPTER 1680-3-4
TOURIST-ORIENTED DIRECTIONAL SIGNS**

Presented herein are proposed rules of the Tennessee Department of Transportation, Maintenance Division, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Transportation to promulgate these rules without a rulemaking hearing unless a petition requesting such a hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. To be effective, such petition must be filed with the Tennessee Department of Transportation, Legal Office, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0326, and in the Department of State, Division of Publications, 312 Eighth Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243-0307, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the text of these proposed rules, contact the Tennessee Department of Transportation, Legal Office, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243-0326, telephone number (615) 741-2941.

The text of the proposed rules is as follows:

REPEALS

All rules within Chapter 1680-3-4, Tourist Oriented Directional Signs, are repealed in their entirety and replaced with the following new rules:

NEW RULES

TABLE OF CONTENTS

1680-3-4-.01	Purpose and Scope of the TODS Program
1680-3-4-.02	Definitions
1680-3-4-.03	General Requirements for the TODS Program
1680-3-4-.04	Eligibility for Participation in Program
1680-3-4-.05	Design and Content of Signs
1680-3-4-.06	Criteria for Sign Location and Placement
1680-3-4-.07	Application for Participation in Program
1680-3-4-.08	Additional Considerations for Participation
1680-3-4-.09	Fees
1680-3-4-.10	Maintenance and Financial Responsibility
1680-3-4-.11	Revocation of Participation in TODS Program
1680-3-4-.12	Appendix

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1680-3-4-.01 PURPOSE AND SCOPE OF THE TODS PROGRAM.

- (1) Purpose of Chapter.

The purpose of this Chapter is to supplement the *Manual on Uniform Traffic Control Devices* (MUTCD), which the Department has adopted and incorporated by reference in Chapter 1680-3-1, by establishing criteria for participation in and administration of a Tourist-Oriented Directional Signs (TODS) program within the rights-of-way of state highways in the State of Tennessee.

- (2) Purpose of TODS Program.

In accordance with the MUTCD, TODS signs are guide signs to be used on conventional highways in rural areas to display business identification and directional information for tourist-oriented businesses that attract highway users from outside the immediate area of the business. Under the MUTCD and this Chapter, TODS signs are a type of traffic control device and are not considered advertising.

- (3) Scope of TODS Program.

- (a) The TODS program in the State of Tennessee shall be available to lawful cultural, historical, recreational, agricultural, educational, or entertainment activities, state and national parks, and commercial activities which are unique and local in nature, where the major portion of income from or visitors to such activity are derived during its normal business season from highway users not residing in the immediate area of the business.
- (b) The scope of the TODS program in the State of Tennessee shall be limited to tourist-oriented businesses that are not located on a state highway.

Authority: T.C.A. §§ 54-5-1301 and 54-5-1303.

1680-3-4-.02 DEFINITIONS.

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Transportation.
- (2) "Conventional highway" means a highway with at-grade intersections and without control of access.
- (3) "Department" means the Tennessee Department of Transportation.
- (4) "Eligibility distance" means the total roadway distance from the turn on the state highway where the TODS sign is located to the entry driveway of the tourist-oriented business; and, if necessary to break a tie between two otherwise eligible businesses, the eligibility distance shall also include the distance from the beginning of the entry driveway to the entry door of the business.
- (5) "Expressway" means a divided highway with partial control of access and some grade-separated interchanges rather than at-grade intersections.
- (6) "Freeway" means a divided highway with full control of access and grade-separated interchanges rather than at-grade intersections.

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- (7) "Immediate area of the business" means the area within a twenty-mile radius of the business.
- (8) "Local road" means a city street or county road not on the state highway system.
- (9) "MUTCD" means the United States Department of Transportation, Federal Highway Administration, *Manual on Uniform Traffic Control Devices for Streets and Highways*, which is adopted and incorporated by reference in Chapter 1680-3-1 of the Rules of the Tennessee Department of Transportation.
- (10) "Rural" means an area outside the limits of an incorporated municipality having a population of 5,000 or more according to the most recent decennial census of the United States Bureau of Census.
- (11) "State highway" means a highway designated by the Department as part of the state highway system of the State of Tennessee.
- (12) "TODS sign" means an official sign structure placed along the right-of-way of a state highway that contains one or more TODS sign panels.
- (13) "TODS sign panel" means an individual sign panel on a TODS sign that identifies the name of a participating tourist-oriented business, the direction of turn to reach the business, and the distance to the business from the turn off of the state highway.
- (14) "Tourist-oriented business" means a private or public entity, including a publicly owned park, which offers lawful cultural, historical, recreational, agricultural, educational, entertainment and/or commercial activities, services or products to the general public, and the major portion of whose income or visitors are derived during its normal business season from highway users residing outside the immediate area of the business.
- (15) "Trailblazer sign" means a secondary sign placed on the right-of-way of a local road that indicates the need for and direction of an additional turn necessary to reach a participating tourist-oriented business identified on a TODS sign.

Authority: *T.C.A. § 54-5-1303.*

1680-3-4-.03 GENERAL REQUIREMENTS FOR THE TODS PROGRAM.

In general, the TODS program shall be in compliance with:

- (1) The MUTCD;
- (2) Local zoning and local zoning authorities; and
- (3) All laws and regulations for scenic highways and scenic parkways, in accordance with Tennessee Code Annotated, Title 54, Chapter 17, Parts 1 and 2.

Authority: *T.C.A. §§ 54-5-1302 and 54-5-1303.*

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1680-3-4-.04 ELIGIBILITY FOR PARTICIPATION IN PROGRAM.

(1) Required Characteristics of a Tourist-Oriented Business.

In general, participation in the TODS program of this State is open to tourist-oriented businesses that are unique and local in nature and located in a rural area. More specifically, to be eligible for identification on a TODS sign panel, a tourist-oriented business shall have each of the following characteristics:

- (a) It shall offer lawful cultural, historical, recreational, agricultural, educational, entertainment, or commercial activities, services and/or products to the general public.
- (b) It shall be unique and local in nature, and not part of a chain of businesses having a common name under common ownership and management or under a franchise arrangement.
- (c) It shall derive the major portion of its income or visitors, during its normal business season, from highway users residing outside the immediate area of the business.
- (d) It shall have a permanent location:
 - 1. In a rural area, as defined in this Chapter; and
 - 2. On a local road within ten (10) miles of the nearest intersection with a state highway where a TODS sign may be located in accordance with Rule 1680-3-4-.06 of this Chapter.
- (e) It shall be open to the public on a regular schedule, at least five (5) days per week and eight (8) hours per day (holidays excepted), throughout the year; provided, however, that a tourist-oriented business open on a seasonal basis may be eligible for participation in the TODS program, as provided in Rule 1680-3-4-.08 of this Chapter.
- (f) It shall have a telephone, restrooms and drinking water available to visitors; provided, however, that this requirement shall not apply to seasonal tourist-oriented businesses offering agricultural activities, services or products.
- (g) If any general admission is charged, the costs of admission shall be clearly displayed to the prospective visitors at the entrance to the business.

(2) Legal Requirements.

In addition, to be eligible for participation in the TODS program, a tourist-oriented business shall comply with each of the following legal requirements:

- (a) It shall comply with all applicable laws and regulations concerning the provision of public accommodations without regard to race, religion, color, age, sex, national origin, disability or other category protected by Federal, State or local law.
- (b) It shall have all licenses required by any governmental agency having authority to regulate the business.

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- (c) It shall comply with all applicable local zoning ordinances and regulations.
 - (d) It shall comply with all applicable Federal, State and/or local regulations for public accommodations with respect to health, sanitation and safety.
 - (e) It shall not have any illegal advertising signs on or along any state highway, as provided in the Federal Highway Beautification Act of 1965, 23 U.S.C. § 131, the Tennessee Billboard Regulation and Control Act of 1972, T.C.A. § 54-21-101, et seq., and regulations promulgated thereunder for the control of outdoor advertising.
- (3) Multiple Signing Prohibited.
- (a) A tourist-oriented business offering multiple activities, services and/or products to the public shall not be eligible for separate TODS sign panels for separate portions of the business but only as a single entity.
 - (b) Any tourist-oriented business for which the Department has erected a supplemental guide sign in accordance with Chapter 1680-3-2 of the Rules of the Tennessee Department of Transportation shall not be eligible for participation in the TODS program under this Chapter.
 - (c) A tourist-oriented business for which the Department has erected a logo sign in accordance with Chapter 1680-3-3 of the Rules of the Tennessee Department of Transportation, but which is eligible for a TODS sign under this Chapter, shall not be permitted to have a Logo Program trailblazer sign under Chapter 1680-3-3 at the same intersection.

Authority: T.C.A. §§ 54-5-1301, 54-5-1302, 54-5-1303 and 54-5-1306(d).

1680-3-4-.05 DESIGN AND CONTENT OF SIGNS.

- (1) TODS Signs and TODS Sign Panels.
 - (a) Each TODS sign shall have from one (1) up to a maximum of four (4) TODS sign panels.
 - (b) Each TODS sign panel shall be constructed as follows:
 - 1. It shall have a standard size of sixty inches (60") wide by fifteen inches (15") high;
 - 2. It shall have a white legend and border on a blue background; and
 - 3. It shall have a sign face fabricated from reflective sheeting that meets the Department's Standard Specifications for Road and Bridge Construction, Section 916.06, Type III, which shall be applied to one-tenth inch (0.10") flat sheet aluminum sign blanks conforming to ASTM-B 209 Alloy 6061-T6 or 5052-H38.
- (2) Sign Legend.

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The legend on each TODS sign panel, as illustrated in the Appendix to this Chapter (Rule 1680-3-4-.12), shall be designed as follows:

- (a) It shall have a message block (48" wide by 15" high) identifying the legal name or "doing business as" name of the eligible tourist-oriented business, which message shall be in upper case letters and shall not exceed two (2) lines nor more than fifteen (15) characters per line (including all letters, symbols and spaces);
 - (b) It shall have a directional information block (12" wide by 15" high) with an arrow pointing in the direction of the turn and a number stating the distance (to the nearest tenth of a mile) to the identified business, which block shall appear on the left side of the panel for left-turn businesses and on the right side of the panel for right-turn businesses; and
 - (c) All letters and numerals in the legend shall be four inches (4") in height.
- (3) Content.

The content of the legend on each TODS sign panel shall be limited to the business identification and directional information described above in this rule. The legend shall not include any type of business logo or any form of promotional advertising.

- (4) Trailblazer Signs.

Any trailblazer sign erected on a local road to indicate the need for an additional turn to reach a tourist-oriented business shall display the same business name as shown on the TODS sign panel installed on the state highway, and it shall display a directional arrow and the distance to the business at the turn. The trailblazer sign shall meet the same specifications and standards described above in this rule for TODS sign panels.

Authority: T.C.A. § 54-5-1303.

1680-3-4-.06 CRITERIA FOR SIGN LOCATION AND PLACEMENT.

- (1) Location of TODS Signs.

The location criteria for erecting TODS signs are as follows:

- (a) The Department will erect TODS signs along state highways, including conventional highways and expressways, at intersections with local roads where highway users will turn to reach eligible tourist-oriented businesses that have qualified to participate in the TODS program in accordance with Rule 1680-3-4-.07 below.
- (b) The Department will not erect TODS signs on freeways (including ramps) or at interchanges on expressways (including ramps), or on any scenic highway or parkway that is not eligible for TODS program signing under the provisions of Tennessee Code Annotated, Title 54, Chapter 17, Parts 1 and 2.
- (c) The Department will not erect a new TODS sign on any state highway within the limits of an incorporated municipality having a population of 5,000 or more according to the most recent decennial census of the United States Bureau of Census. TODS signs shall not

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be erected outside of such a municipality for a tourist-oriented business within the limits of such a municipality.

- (d) In addition, the Department will not erect a new TODS sign, or renew an existing TODS sign, on any state highway within any incorporated municipality without the prior written consent of the municipal government. This written consent must be obtained by the tourist-oriented business seeking to qualify for participation in the TODS program, as provided in Rule 1680-3-4-.07 below, or by a tourist-oriented business seeking to renew participation in the TODS program, as provided in Rule 1680-3-4-.08(3) below.
 - (e) At intersections where TODS signs may be erected, the Department will erect TODS signs for each direction of travel along the state highway. Generally, the Department will erect a separate TODS sign for each direction of turn in each direction of travel, unless the Department decides to erect only one TODS sign in each direction of travel as provided in subparagraph (2)(e) of this rule.
 - (f) TODS signs should be located at least two hundred feet (200') in advance of the intersection, and they should be spaced at least two hundred feet (200') from another TODS sign or any other traffic control sign.
 - (g) The location of other traffic control devices, including regulatory, warning and guide signs, shall take precedence over the location of TODS signs.
- (2) Installation and Placement of TODS Sign Panels.

The criteria for installing and placing TODS sign panels are as follows:

- (a) No more than four (4) TODS sign panels shall be installed on any one TODS sign.
- (b) Subject to space limitations, the Department will install one TODS sign panel for a qualified tourist-oriented business on a TODS sign in each direction of travel at the intersection that provides the shortest eligibility distance to that business.
- (c) In the Department's discretion, a second set of TODS sign panels may be installed for a qualified tourist-oriented business at an additional intersection on a second state highway, but only if the second set of TODS sign panels does not prevent another qualified tourist-oriented business from obtaining a first set of TODS sign panels at that intersection.
- (d) TODS sign panels for qualified tourist-oriented businesses shall be grouped by direction of turn. The placement of TODS sign panels on TODS signs will be as follows, except as provided in subparagraph (2)(e) of this rule:
 - 1. All qualified tourist-oriented businesses that can be reached by turning left will be placed on the TODS sign farthest from the intersection in each direction of travel.
 - 2. All qualified tourist-oriented businesses that can be reached by turning right will be placed on the TODS sign nearest to the intersection in each direction of travel.

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3. On each TODS sign, the TODS sign panels for each qualified tourist-oriented business will be placed in order of eligibility distance, with the business having the shortest eligibility distance at the top and the business with the greatest eligibility distance at the bottom.
 - (e) If there are not more than four (4) TODS sign panels to be installed for each direction of travel at an intersection, the Department may choose to erect only one TODS sign for each direction of travel. In such case, the TODS sign panels for qualified tourist-oriented businesses that can be reached by turning left will be installed at the top of the TODS sign, in order of eligibility distance from shortest to greatest, and the TODS sign panels for businesses that can be reached by turning right will be installed below, in order of eligibility distance from shortest to greatest.
 - (f) Where a trailblazer sign is required to reach a tourist-oriented business, the Department will not install a TODS sign panel for that business until the business has erected the trailblazer sign in accordance with paragraph (3) of this rule.
- (3) Trailblazer Signs.

The criteria for erecting trailblazer signs on local roads are as follows:

- (a) If it is necessary to erect a trailblazer sign on a local road to indicate the need for an additional turn to reach a tourist-oriented business, it shall be the responsibility of the business to erect the trailblazer sign.
- (b) No trailblazer sign may be erected on any local road within the limits of an incorporated municipality having a population of 5,000 or more according to the most recent decennial census of the United States Bureau of Census.
- (c) The erection of a trailblazer sign on any local road shall be subject to the approval of the local government having jurisdiction over the road. It shall be the responsibility of the tourist-oriented business to obtain the written approval of the local government for the trailblazer sign and to provide a copy of this approval to the Department before the Department will install a TODS sign panel for the business on a state highway.

Authority: T.C.A. § 54-5-1303.

1680-3-4-.07 APPLICATION FOR PARTICIPATION IN PROGRAM.

- (1) Application.

To qualify for participation in the TODS program, an eligible tourist-oriented business must complete an application, including business identification and directional information, on a form provided by the Department. The application form may be obtained from and shall be submitted to the following:

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Tennessee Department of Transportation
Maintenance Division, TODS Program
Suite 400, James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243
Telephone: (615) 741-2027

Or through the Department's website, as follows:

www.tdot.state.tn.us/Chief_Engineer/assistant_engineer_operations/maintenance/TODSProgram

- (2) Additional Requirements.
- (a) The business shall provide to the Department an affidavit and/or such other evidence as the Department may reasonably request to demonstrate that the major portion of the business's income or visitors are derived during its normal business season from highway users residing outside the immediate area of the business.
 - (b) The business shall obtain and submit to the Department all required written approvals from local governments for erecting TODS signs within an incorporated municipality and/or trailblazer signs on local roads, as provided in Rule 1680-3-4-.06.
 - (c) The business shall, as part of its application, agree to hold the State of Tennessee, the Department and its officers, employees, representatives, contractors and/or agents harmless for any loss of business that may be caused by any damage to or removal of a TODS sign, TODS sign panel or trailblazer sign as a result of highway construction, highway maintenance or any other reason.
 - (d) The business shall tender the payment of all fees as required in Rule 1680-3-4-.09 below.

Authority: T.C.A. § 54-5-1303.

1680-3-4-.08 ADDITIONAL CONSIDERATIONS FOR PARTICIPATION.

- (1) Availability of Space.

The Department's approval of a tourist-oriented business's application for participation in the TODS program is subject to the availability of space as follows:

- (a) The Department will approve the application only if there is space available to install TODS sign panels for the business as provided in Rule 1680-3-4-.06 above.
- (b) When more than one eligible tourist-oriented business applies for participation in the TODS program at an intersection where there is not sufficient space to install TODS sign panels for more than one business, the Department will award installation:
 - 1. To the business from which the Department first received a qualified application,
or

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2. If the Department received more than one qualified application on the same date, the Department will award installation to the business with the greatest eligibility distance.
 - (c) The Department shall refund payment of the Initial Permit Fee (but not the Application Fee), as established in Rule 1680-3-4-.09 below, to a tourist-oriented business whose application for participation in the TODS program has been denied based on insufficient space in accordance with subparagraph (b) above.
 - (d) Where, because of insufficient space, the Department has denied an eligible tourist-oriented business's application for a TODS sign panel at the intersection providing the shortest eligibility distance, the Department may approve an application by that business for a TODS sign panel at another intersection having a greater eligibility distance where space is available if, in the judgment of the Department, the signing would provide suitable directional information to highway users.

(2) Seasonal Businesses.

A tourist-oriented business that is open to the public only on a seasonal basis rather than year-round may qualify for participation in the TODS program subject to the following additional considerations:

- (a) In its application to the Department, the business must provide a schedule of its regular seasonal dates of operation when it is open to the public.
- (b) The business shall pay an additional Seasonal Business Fee each year, as provided in Rule 1680-3-4-.09 below, for the placement and removal of a "Closed" placard over the directional information portion of the TODS sign panel, or for the temporary removal and storage and reinstallation of the TODS sign panel, during the seasons of the year when the business is closed to the public. This additional fee shall be payable to the Department with the business's initial application for participation in the TODS program and with each annual renewal of participation.

(3) Annual Renewal of Participation.

- (a) After the Department has approved an application to participate in the TODS program, the qualifying tourist-oriented business may continue to participate in the program on a renewable annual basis thereafter so long as the business remains in compliance with the provisions of this Chapter and pays all applicable fees in accordance with Rule 1680-3-4-.09.
- (b) The annual term shall begin on the date the Department installs the business's TODS sign panels on a state highway and shall expire on the anniversary of that date each year thereafter unless timely renewed by payment of all applicable renewal fees.
- (c) The applicable annual renewal fees are due thirty (30) days prior to the expiration of the annual term.

(4) Inspections.

The Department may inspect a tourist-oriented business at any time after the business has made application for participation in the TODS program to assure that the business meets all

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eligibility requirements or other requirements to qualify for continuing participation in the TODS program.

Authority: T.C.A. §§ 54-5-1303 and 54-5-1306.

1680-3-4-.09 FEES

(1) Standard Fees.

To cover the cost of erecting signs and administering the TODS program, each participating tourist-oriented business shall pay the Department the following fees:

(a) Application Fee	\$25.00
(b) Initial Permit Fee (per TODS sign panel)	\$200.00
(c) Annual Renewal Fee (per TODS sign panel)	\$50.00

(2) Special Fees.

In addition, a participating tourist-oriented business shall pay the Department the following fees as applicable to that particular business:

(a) Seasonal Business Fee (annually per TODS sign panel)	\$50.00
(b) Replacement Fee (per TODS sign panel replaced or changed)	\$200.00

(3) Additional Notes.

- (a) Fees will not be pro-rated based on the seasonal closing of any business.
- (b) Fees will not be reimbursed if a business closes during an annual term or if TODS sign panels are removed by the Department based on a violation of the provisions of this Chapter.

Authority: T.C.A. § 54-5-1303.

1680-3-4-.10 MAINTENANCE AND FINANCIAL RESPONSIBILITY

(1) TODS Signs and TODS Sign Panels.

- (a) The Department will install all TODS signs and TODS sign panels on state highway rights-of-way, subject to the payment of all required fees by participating tourist-oriented businesses.
- (b) Each participating tourist-oriented business shall be responsible for the cost of replacing TODS sign panels that have been damaged or destroyed by acts of vandalism, natural causes or accidents. When it is necessary to replace a sign, the Department will assess, and the participating tourist-oriented business shall pay, the required Replacement Fee, as provided in Rule 1680-3-4-.09.

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(2) Trailblazer Signs.

When trailblazer signs are required on local roads to provide directional information to a participating tourist-oriented business, it shall be the responsibility of each business to install and maintain the necessary trailblazer signs, at its own expense, subject to the approval of the local government having jurisdiction over the local road where the sign is to be located.

(3) Loss of Business.

The Department shall have no liability for any loss of business that may result because a TODS sign panel is, for any reason, temporarily absent from a TODS sign on a state highway.

Authority: T.C.A. § 54-5-1303.

1680-3-4-.11 REVOCATION OF PARTICIPATION IN TODS PROGRAM

(1) Grounds for Revocation.

The Department may revoke the privilege of participation in the TODS program if it finds that any participating tourist-oriented business:

1. Has made a false, deceptive or fraudulent statement in its application or in any other information submitted to the Department;
2. Engages in any deceptive or fraudulent business practice;
3. Fails to pay any required fee on a timely basis;
4. No longer meets the eligibility requirements set forth in this Chapter;
5. Ceases to operate as a business on a continuing basis in accordance with the schedule submitted to the Department in its application; or
6. Alters or modifies any TODS sign or TODS sign panel erected or installed by the Department.

(2) Procedure for Revocation.

The procedures for revocation are as follows:

- (a) Prior to revoking the privilege of participating in the TODS program, the Department will notify the tourist-oriented business in writing of the grounds for the proposed revocation. The notice will be sent by certified and regular mail. Notices sent by regular mail will be presumed to have been received by the business within three (3) business days after mailing.
- (b) Within fifteen (15) days after receipt of the notice to correct the condition(s) cited as the ground(s) for the proposed revocation, the business shall either:

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1. Correct the condition(s) cited as ground(s) for the proposed revocation, and provide sufficient written proof thereof to the satisfaction of the Department, or
 2. If the business denies the cited ground(s) for the proposed revocation, the business shall deliver a written response to the Department stating in detail the bases for the denial and requesting a hearing before the Commissioner or the Commissioner's designee.
- (c) If the business fails to correct the cited ground(s) for revocation or fails to respond within fifteen (15) days, the Department will send the business a written notice of revocation and remove all TODS sign panels for that business from the state highway rights-of-way.
- (d) If the business requests a hearing, an informal hearing will be held before the Commissioner or the Commissioner's designee to consider the matter. The decision of the Commissioner or the Commissioner's designee shall be made in writing to the business and shall be final.

Authority: T.C.A. § 54-5-1303.

1680-3-4-.12 Appendix

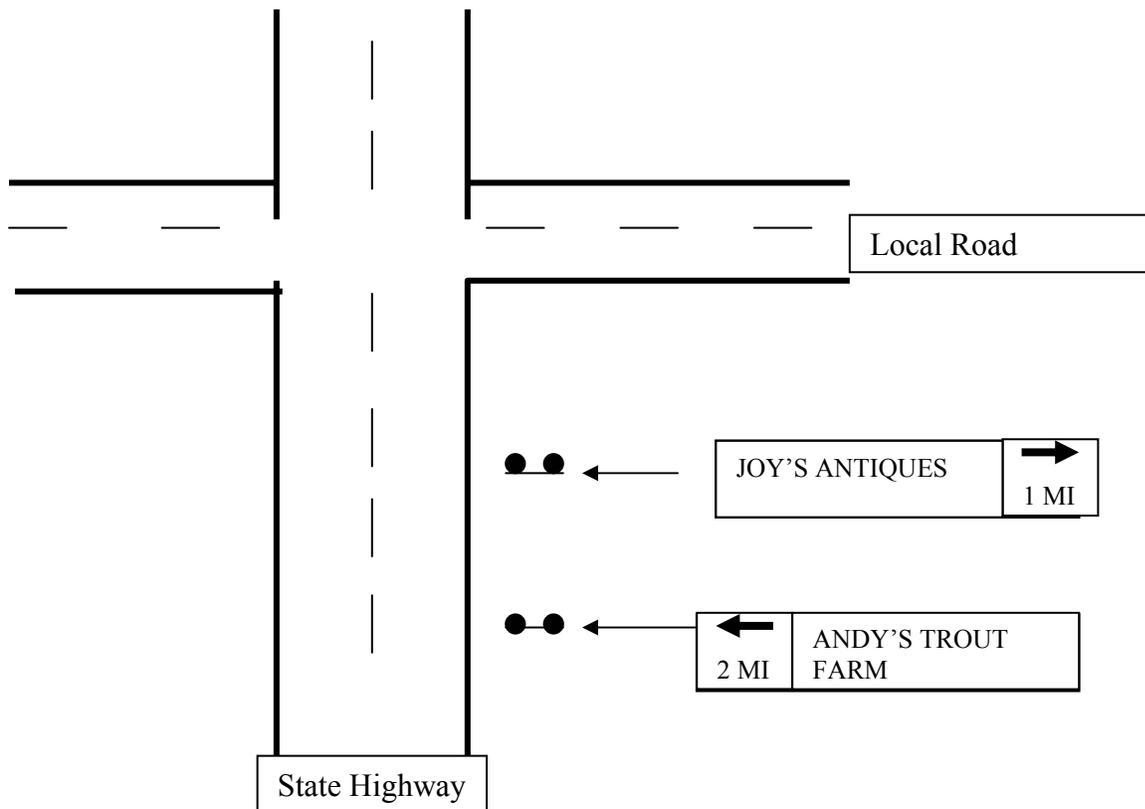


Figure 1. Typical sign layout for TODS

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Authority T.C.A. § 54-5-1303.

The proposed rules set out herein were properly filed in the Department of State on the 2nd day of August, 2005, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 29th day of December, 2005. (08-04)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

FOR TEXT OF PUBLIC NECESSITY RULE, SEE T.A.R. CITED

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-1 General Rules, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-03)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Standard rules to reflect changes resulting from the amendment of the TennCare waiver, chapter 1200-13-13 TennCare Medicaid, 6 T.A.R. (June 2005) - Filed May 5, 2005; effective through October 17, 2005. (05-05)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility, chapter 1200-13-13 TennCare Medicaid, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-06)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding appeals, chapter 1200-13-13 TennCare Medicaid, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-10)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-04)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-05)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 26, 2005; effective through January 10, 2005. (07-43)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2005. (07-44)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-13 TennCare Medicaid, 8 T.A.R. (August 2005) - Filed July 6, 2005; effective through November 20, 2005. (07-09)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-06)

PUBLIC NECESSITY RULES

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-07)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2006. (07-45)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 29, 2005; effective through January 10, 2005. (07-46)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning TennCare Demonstration Project, chapter 1200-13-14 TennCare Standard, 8 T.A.R. (August 2005) - Filed July 6, 2005; effective through November 20, 2005. (07-08)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity required to modify the current TennCare rules to reflect changes resulting from the Balanced Budget Act of 2003, chapter 1200-13-14 TennCare Standard, 6 T.A.R. (June 2005) - Filed May 5, 2005; effective through October 17, 2005. (05-06)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Standard rules to reflect changes resulting from the amendment of the TennCare waiver, chapter 1200-13-14 TennCare Medicaid, 5 T.A.R. (May 2005) - Filed April 29, 2005; effective through October 11, 2005. (04-18)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility and enrollment, chapter 1200-13-14 TennCare Standard, 7 T.A.R. (June 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-07)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules concerning eligibility and appeals, chapter 1200-13-14 TennCare Standard, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-11)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding Medical Cost Containment Program, chapter 0800-2-17 Medical Cost Containment Program, 7 T.A.R. (July 2005) - Filed June 8, 2005; effective through November 20, 2005. (06-14)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding, chapter 0800-2-18 Medical Fee Schedule, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-15)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding Inpatient fees, chapter 0800-2-19 In-Patient Hospital Fee Schedule, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-16)
- 0800 - Department of Labor - Division of Workers' Compensation - Public Necessity Rules regarding medical impairment rating, chapter 0800-2-20 Medical Impairment Rating Registry Program, 7 T.A.R. (July 2005) - Filed June 15, 2005; effective through November 27, 2005. (06-20)

PUBLIC NECESSITY RULES

- 1240 - Department of Human Services - Child Support Division - Public Necessity Rules required in order to maintain compliance with federal requirements, chapter 1240-2-2 Forms for Income Assignments, 6 T.A.R. (June 2005) - Filed May 20, 2005; effective through November 1, 2005. (05-20)
- 1240 - Department of Human Services - Child Support Division - Public Necessity Rules dealing with Child support obligations, 1240-2-2 Forms for Income Assignments, 6 T.A.R. (June 2005) - Filed May 20, 2005; effective through November 1, 2005. (05-21)
- 1240 - Department of Human Services - Family Assistance Division - Public Necessity Rules concerning standard of need/income, chapter 1240-1-50 Financial Eligibility Requirements Family First Program, 8 T.A.R. (August 2005) - Filed July 1, 2005; effective through December 13, 2005. (07-01)
- 1540 - TN Higher Education Commission - Public Necessity Rules concerning tuition and fee waiver, chapter 1540-1-4 Public Higher Education Fee Waivers for State Employees, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-02)
- 1540 - TN Higher Education Commission - Public Necessity Rules concerning tuition and fee waiver, chapter 1540-1-5 Public Higher Education Fee Discounts for Children of Licensed Public School Teachers and State Employees, 7 T.A.R. (July 2005) - Filed June 3, 2005; effective through November 15, 2005. (06-04)

PUBLIC NECESSITY RULES

**THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
PETROLEUM UNDERGROUND STORAGE TANK DIVISION**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

The 104th Tennessee General Assembly passed Public Chapter 283 (2005) with an effective date of July 1, 2005. This amends Title 68, Chapter 215, Part 1.

Rules, promulgated pursuant to subdivision 5(1)(B)(ii) of Public Chapter 283 (2005) (an amendment of T.C.A. § 68-215-111(e)), are required to be effective by September 1, 2005. This timeframe precludes the utilization of the Rulemaking Hearing Rule promulgation process. Therefore, the Public Necessity Rule process is being utilized to promulgate these rules so that they may be effective September 1, 2005 as prescribed by the Tennessee General Assembly.

The Tennessee Petroleum Underground Storage Tank Board is authorized and required, by the above referenced action of the Tennessee General Assembly, to promulgate rules establishing a system of incentives. The incentives are in the form of reduction of the required financial responsibility amounts. The purpose of the incentives is to encourage tank owners to use technologies or management practices that go beyond the minimum requirements and significantly enhance prevention of petroleum releases from petroleum underground storage tanks or reduce the detection timeframe for such releases.

For copies of the entire text of the proposed notice, please contact Donna Washburn, Deputy Director, Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, 4th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1541, telephone 615-532-0987, e-mail Donna.Washburn@state.tn.us.

Hugh M. Calloway, Jr.
Chairman
Tennessee Petroleum Underground
Storage Tank Board

**PUBLIC NECESSITY RULES
OF THE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
PETROLEUM UNDERGROUND STORAGE TANK DIVISION**

**CHAPTER 1200-1-15
UNDERGROUND STORAGE TANK PROGRAM**

AMENDMENTS

Paragraph (3) Definitions of rule 1200-1-15-.01 Program Scope and Minimum Requirements for Tanks is amended by inserting the following definitions in alphabetical order and renumbering the definitions accordingly:

“Containment sump” means a liquid-tight compartment that provides containment of any product releases. Containment sumps are typically used underneath product dispensers and/or for enclosing the submersible turbine pump and piping connections at the top of an underground storage tank.

“Continuous In-Tank Leak Detection System” means a release detection system that allows an underground storage tank to operate continuously or nearly continuously without interruption for

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release detection tests. However, the system may default to a standard or shut down test, requiring the tank to be taken briefly out of service at the end of the month if sufficient good data has not been obtained over the month. These methods include Continuous Automatic Tank Gauging Systems and Continual Reconciliation Systems.

“Dispenser” means a device that discharges petroleum products from underground storage tanks into tanks in motorized vehicles, equipment tanks, or other containers, while simultaneously measuring the amount of petroleum dispensed.

“Flexible piping” means piping constructed of flexible thermoplastic material that is typically installed in one continuous run with no inaccessible joints.

“Secondary containment” means a system designed and installed so that any material that is released from the primary containment is prevented from reaching the soil or groundwater outside the system.

“Submersible Turbine Pump” or “STP” means pump located inside a petroleum underground storage tank, positioned near the bottom of the tank, thereby “submerged” in the petroleum.

Paragraph (8) Scope of Fund Coverage of rule 1200-1-15-.09 is amended as follows:

Subparagraph (b) is amended by deleting “parts 1., 2., or 3.” And replacing it with “parts 1 through 6”.

Subparagraph (b) is further amended by the addition of Part 6 as set forth below:

6. If the date of the release was on or after July 1, 2005, the financial responsibility requirements for fund eligible owners or operators or petroleum site owners for taking corrective action shall be twenty thousand dollars (\$20,000) and compensation of third parties shall be twenty thousand dollars (\$20,000).

Subparagraph (8)(b) is further amended by adding the following row to the bottom of Table 3, Owner/ Operator Financial Responsibility per Site per Occurrence:

On or After July 1, 2005	\$20,000 Clean-up/ \$20,000 third party	\$20,000 Clean-up/ \$20,000 third party	\$20,000 Clean-up/ \$20,000 third party
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A new Subparagraph (d) is added as follows:

(d) If the date of the release is on or after September 1, 2005, the owner and/or operator may apply for a reduction of the financial responsibility requirement for corrective action set forth in part (b)6. of this paragraph. Application shall be made using a format established by the division and in accordance with instructions provided by the division.

1. The tank owner and/or operator must demonstrate to the satisfaction of the division that each UST system at the facility meets or exceeds the criteria for reduction of the financial responsibility amount set forth in the table in this subparagraph. Such demonstration may include, but not be limited to:

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- (i) Submittal of verifying documentation to the division; and/or
 - (ii) On-site verification by the division.
2. For each criterion met there shall be an associated reduction in the financial responsibility amount. However, the maximum percentage reduction in the financial responsibility amount per occurrence shall not exceed fifty percent (50 %).

CRITERIA	PERCENTAGE REDUCTION
Double Wall Tank(s)	10 %
Secondary Containment Chase Piping Enclosing Fiberglass Primary Piping or Flexible Plastic Piping with Containment Sumps at Piping Joints	10 %
Containment Sumps at Submersible Turbine Pumps	10 %
Containment Sumps under Dispensers	10 %
Continuous In-Tank Leak Detection System	10 %

3. If a criterion is not applicable to one or more of the UST systems at the facility, then the conditions of part 1 of this subparagraph shall have been met if every UST system at the facility for which the criterion is applicable meets that criterion. For example, the criterion for a containment sump under a dispenser is not applicable to a UST system used to store waste oil or used oil.
4. Upon confirmation by the division that a tank owner and/or operator has met one or more of the criteria for reduction of the financial responsibility amount set forth in the table in this subparagraph, the tank owner and/or operator will be sent correspondence setting forth the new reduced financial responsibility amount.

The public necessity rules set out herein was properly filed in the Department of State on the 29th day of August, 2005 and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 10th day of February, 2006. (08-57)

PUBLIC NECESSITY RULES

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

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

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

The State of Tennessee received federal approval for certain amendments to the TennCare Demonstration Project (No. 11-W-0015 1/4). Approval of the project modification is granted under the authority of Section 1115 (a) of the Social Security Act. The amendments are approved through the period ending June 30, 2007. The TennCare program is a managed care program for both the Medicaid population and the expansion population.

This rule is being amended to delete the section of the TennCare Medicaid rules that addresses the TennCare Partners State-Only Program since the responsibility for these services is being transferred to the Tennessee Department of Mental Health and Developmental Disabilities. These services are not provided with Medicaid funds, but with State-only funds under the direction of TDMHDD.

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

I have made a finding that these amendments are required to ensure that persons being disenrolled from TennCare Medicaid under provisions outlined elsewhere in these rules are not provided the opportunity to simply come back into the TennCare program as State-only eligibles.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

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

BUREAU OF TENNCARE

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

AMENDMENT

Rule 1200-13-13-.14 TennCare Partners State-Only Program is deleted in its entirety.

Authority: *T.C.A. 4-5-209, 71-5-105, 71-5-109, 71-5-134 and Executive Order No. 23.*

The Public Necessity rules set out herein were properly filed in the Department of State on the 18th day of August, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 30th day of January, 2006. (08-33)

PUBLIC NECESSITY RULES

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

**CHAPTER 1200-13-14
TENNCARE STANDARD**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

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

The State of Tennessee received federal approval for certain amendments to the TennCare Demonstration Project (No. 11-W-0015 1/4). Approval of the project modification is granted under the authority of Section 1115 (a) of the Social Security Act. The amendments are approved through the period ending June 30, 2007. The TennCare program is a managed care program for both the Medicaid population and the expansion population.

This rule is being amended to delete the section of the TennCare Medicaid rules that addresses the TennCare Partners State-Only Program since the responsibility for these services is being transferred to the Tennessee Department of Mental Health and Developmental Disabilities. These services are not provided with Medicaid funds, but with State-only funds under the direction of TDMHDD.

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

I have made a finding that these amendments are required to ensure that persons being disenrolled from TennCare Medicaid under provisions outlined elsewhere in these rules are not provided the opportunity to simply come back into the TennCare program as State-only eligibles.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14
TENNCARE MEDICAID**

AMENDMENT

Rule 1200-13-14-.14 TennCare Partners State-Only Program is deleted in its entirety.

Authority: *T.C.A. 4-5-209, 71-5-105, 71-5-109, 71-5-134 and Executive Order No. 23.*

The Public Necessity rules set out herein were properly filed in the Department of State on the 18th day of August, 2005, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 30th day of January, 2006. (08-34)

RULEMAKING HEARINGS

BOARD OF CHIROPRACTIC EXAMINERS - 0260

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-4-101, 63-4-106, and 63-4-114. 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 5th Fifth Avenue North, Nashville, TN at 9:30 a.m. (CDT) on the 18th day of October, 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 0260-2-.02 Scope of Practice, is amended by adding the following language as new paragraph (4):

- (4) Clinical acupuncture – The purpose of this rule is to establish the parameters for a chiropractic physician to perform clinical acupuncture within his/her scope of practice, to distinguish between clinical acupuncture and traditional Chinese medicine, and to establish the requirements for certification to perform clinical acupuncture.
 - (a) Clinical acupuncture is defined as the practice of applying therapeutic procedures and modalities to patients based upon contemporary principles of meridian therapy and clinical physiological methodology.
 - (b) Before clinical acupuncture is administered, a chiropractic diagnosis, based upon the principles of western medicine, is necessary to properly establish the indications and contraindications.
 - (c) The purpose of the treatment is to address the diagnosed condition by modulating neurological function, causing the release of enkephalins, endorphins and tissue response and not by the dispersion of stagnant energy or by moving qi or energy.

RULEMAKING HEARINGS

- (d) Any chiropractic licensee or applicant intending to practice clinical acupuncture must hold a certification issued by the Board authorizing such practice. To be eligible for the certification the licensee or applicant must comply with the following:
 - 1. Cause to be submitted directly from the educational institution to the Board's administrative office, proof of successful completion of a Board-approved clinical acupuncture training course of at least one hundred (100) hours which must include training in clean needle technique, and
 - 2. Cause to be submitted directly from the National Board of Chiropractic Examiners to the Board's administrative office, proof of successful completion of its National Acupuncture Board Examination; and
 - 3. Submit the Clinical Acupuncture Certification Fee, as provided in Rule 0260-2-.06.
- (e) Upon certification by the Board, a chiropractor may perform clinical acupuncture as part of the chiropractic modalities, but may not hold himself/herself out as an acupuncturist.
- (f) Licensees who advertise the availability of clinical acupuncture services shall include the term "clinical acupuncture" in the advertisement unless the licensee or the licensee's employee is certified pursuant to T.C.A. §§ 63-6-1001, et seq., as an acupuncturist.
- (g) Performing clinical acupuncture without certification or performing clinical acupuncture beyond the scope of this rule shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-4-101 63-4-106, and 63-4-114.

Rule 0260-2-.06 Fees, is amended by adding the following adding the following language as new subparagraph (1) (g) and is further amended by adding the following language as new subparagraph (4) (g) and renumbering the present subparagraph (4) (g) as (4) (h), so that as amended, the new subparagraphs (1) (g) and (4) (g) shall read:

- (1) (g) Clinical Acupuncture Certification fee - To be paid by all individuals at the time application for certification in clinical acupuncture is requested.
- (4) (g) Clinical Acupuncture Certification \$ 25.00

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2005. (08-60)

RULEMAKING HEARINGS

BOARD OF CHIROPRACTIC EXAMINERS - 0260

There will be a hearing before the Tennessee Board of Chiropractic Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-4-101, 63-4-106, 63-4-107, 63-4-114, 63-4-115, and Public Chapter 286 of the Public Acts of 2005. 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 5th Fifth Avenue North, Nashville, TN at 9:30 a.m. (CDT) on the 18th day of October, 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 0260-2-.19 Board Members, Officers, Consultants, Records, and Declaratory Orders, is amended by adding the following language as new paragraph (10):

- (10) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

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

Rule 0260-2-.24 Chiropractic Professional Corporations and Chiropractic Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

- (1) Chiropractic Professional Corporations (CPC) – Except as provided in this rule Chiropractic Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A CPC need not file its Charter or its Annual Statement of Qualifications with the Board.

RULEMAKING HEARINGS

- (b) Ownership of Stock – Only the following may form and own shares of stock in a foreign or domestic CPC doing business in Tennessee:
1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 or licensed in another state; and/or
 2. A foreign or domestic general partnership, CPC or CPLLC in which all partners, shareholders, members or holders of financial rights are chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or chiropractic physicians licensed by other states, or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians.
- (c) Officers and Directors of Chiropractic Professional Corporations -
1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a chiropractic professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a chiropractic professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a CPC.
- (d) Practice Limitations
1. Engaging in, or allowing another chiropractic physician incorporator, shareholder, officer, or director, while acting on behalf of the CPC, to engage in, chiropractic practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the professional ethics enumerated in Rule 0260-2-.13 and/or Tennessee Code Annotated, Section 63-4-114 (4).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a CPC.
 3. Nothing in these rules shall be construed as prohibiting a CPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician incorporators, directors, officers, shareholders, employees or contractors of the CPC who are practicing chiropractic as defined by Tennessee Code Annotated, Section 63-4-101.

RULEMAKING HEARINGS

4. Nothing in these rules shall be construed as prohibiting a chiropractic physician from owning shares of stock in any type of professional corporation other than a CPC so long as such ownership interests do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician while practicing chiropractic as defined by Tennessee Code Annotated, Section 63-6-204.
- (2) Chiropractic Professional Limited Liability Companies (CPLLC) - Except as provided in this rule Chiropractic Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.
- (a) Filings - Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
 - (b) Membership - Only the following may be members or holders of financial rights of a foreign or domestic CPLLC doing business in Tennessee:
 1. Chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4; and/or
 2. A foreign or domestic general partnership, CPC or CPLLC in which all partners, shareholders, members or holders of financial rights are either chiropractic physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 4 to practice chiropractic in Tennessee or chiropractic physicians licensed by other states or composed of entities which are directly or indirectly owned by such licensed chiropractic physicians.
 - (c) Managers, Directors or Governors of a CPLLC
 1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a chiropractic professional limited liability company as limited by T.C.A. § 48- 248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
 2. Only persons who are eligible to form or become members or holders of financial rights of a chiropractic professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a CPLLC.
 - (d) Practice Limitations
 1. Engaging in, or allowing another chiropractic physician member, officer, manager, director, or governor, while acting on behalf of the CPLLC, to engage in, chiropractic practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the professional ethics enumerated in Rule 0260-2-.13 and/or Tennessee Code Annotated, Section 63-4-114 (4).
 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a CPLLC.

RULEMAKING HEARINGS

3. Nothing in these rules shall be construed as prohibiting a CPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician members or holders of financial rights, governors, officers, managers, employees or contractors of the CPLLC who are practicing chiropractic as defined by Tennessee Code Annotated, Section 63-4-101.
 4. Nothing in these rules shall be construed as prohibiting a chiropractic physician from being a member of any type of professional limited liability company other than a CPLLC so long as such membership interests do not interfere with the exercise of independent chiropractic judgment by the chiropractic physician while practicing chiropractic as defined by Tennessee Code Annotated, Section 63-4-101.
 5. All CPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a CPC or a CPLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the CPC and/or CPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the CPC and/or CPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the CPC and/or CPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the CPC and/or CPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.

RULEMAKING HEARINGS

- (f) If, after the proceeding the Board finds that a CPC and/or CPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1)-(3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (5) The authority to own shares of stock or be members or holders of financial rights in an CPC or an CPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-4-101, 63-4-106, 63-4-107, 63-4-114, and Public Chapter 286 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2005. (08-61)

ANNOUNCEMENTS

THE DEPARTMENT OF COMMERCE AND INSURANCE - 0780

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Chapter 375 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. (Central Time) on Tuesday, October 18, 2005.

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

For a copy of this Notice of Rulemaking Hearing, contact the Office of Legal Counsel, attention Christy Allen, 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 at (615) 741-3072.

SUBSTANCE OF PROPOSED RULES

NEW RULES

CHAPTER 0780-7-1 OFFICE OF THE COMMISSIONER

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0780-7-1-.01 Internet Convenience Fee

0780-7-1-.01 INTERNET CONVENIENCE FEE.

- (1) If the Department of Commerce and Insurance or any board, commission or agency attached thereto offers the issuance or renewal of a license, registration or permit via the Internet, an applicant for licensure or renewal may pay the fee for issuance or renewal of such license, registration or permit via the Internet.
- (2) In order to defray the additional costs associated with processing an application for the issuance or renewal of a license, registration or permit via the Internet, the applicant shall pay, in addition to the applicable licensure, registration, permit or renewal fee, a convenience fee in an amount not to exceed \$3.50 plus an amount not to exceed two percent (2%) of the cost of the applicable license, registration, permit or renewal fee.

Authority: *Chapter 375 of the Public Acts of 2005.*

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of August, 2005. (08-58)

RULEMAKING HEARINGS

BOARD OF COMMUNICATIONS DISORDERS AND SCIENCES - 1370

There will be a hearing before the Tennessee Board of Communications Disorders and Sciences to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-17-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 1st day of November, 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 1370-1-.01, Definitions, is amended by deleting paragraphs (11), (28), and (29) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (11) and (29) shall read:

- (11) Clinical Fellow – A Speech Language Pathologist or Audiologist who is in the process of obtaining his paid professional experience, as defined by a Board-approved accreditation agency, before being qualified for licensure. For the purposes of this chapter, a Clinical Fellow includes audiology students who are in their fourth (4) year of doctoral studies.
- (28) Speech Language Pathology Assistant – An individual who has registered with the Board pursuant to Rule .14, and who meets minimum qualifications as provided in Rule .14 which are less than those established for licensure as a speech language pathologist, and who works under the supervision of a Speech Language Pathologist or Audiologist.
- (29) Supervising Licensee
 - (a) The term used to designate any Tennessee licensed Speech Language Pathologist or Audiologist, or ASHA certified Speech Language Pathologist or Audiologist who provides supervision of a Clinical Fellow, unlicensed Speech Language Pathologist, or unlicensed Audiologist; or
 - (b) The term used to designate any Tennessee licensed Speech Language Pathologist or Audiologist who provides supervision of a Speech Language Pathology Assistant.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-103, 63-17-105, 63-17-114, and Public Chapter 330 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 1370-1-.03, Necessity of Licensure or Registration, is amended by adding the following language as new paragraph (6):

- (6) Use of Titles
 - (a) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Speech Language Pathologist" and to practice speech language pathology, as defined in T.C.A. § 63-17-103.
 - (b) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Audiologist" and to practice audiology, as defined in T.C.A. § 63-17-103.
 - (c) Any person who possesses a valid, unsuspended and unrevoked registration issued by the Board has the right to use the title "Speech Language Pathology Assistant" and to practice under supervision as a Speech Language Pathology Assistant, as defined in T.C.A. § 63-17-103.
 - (d) Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee or certificate holder to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-103, 63-17-105, 63-17-117, and Public Chapter 467 of the Public Acts of 2005.

Rule 1370-1-.05, Licensure Process, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraphs (4), (5), (6), (7), (8), (9) and (10), so that as amended, the new paragraphs (1) through (10) shall read:

- (1) An applicant shall download a current application from the Board's Internet Web page or shall obtain a current application packet from the Board's Administrative Office, respond truthfully and completely to every question or request for information contained in the application form, and submit it, along with all documentation and fees required, to 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 be filed simultaneously.
- (2) An applicant shall submit with his application a certified birth certificate or a notarized photocopy of a certified birth certificate.
- (3) An applicant shall submit with his application a "passport" style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application.
- (4) An applicant shall disclose the circumstances surrounding any of the following:
 - (a) Conviction of a crime in any country, state, or municipality, except minor traffic violations;
 - (b) The denial of certification or licensure application by any other state or country, or the discipline of the certificate holder or licensee in any state or country.
 - (c) Loss or restriction of certification or licensure privileges.

RULEMAKING HEARINGS

- (d) Any judgment or settlement in a civil suit in which the applicant was a party defendant, including malpractice, unethical conduct, breach of contract, or any other civil action remedy recognized by the country's or state's statutory, common law, or case law.
- (5) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.
- (6) An applicant shall file with his application documentation that he possesses a current Certificate of Clinical Competence (CCC) issued through the American Speech Language Hearing Association (ASHA) in the area of requested licensure (speech language pathology and/or audiology).
- (7) An applicant shall have successfully completed the following requirements and cause the supporting documentation to be provided to the Board's Administrative Office:
 - (a) A master's or doctorate degree in speech language pathology or audiology. Unless already submitted pursuant to rule 1370-1-.10, it is the applicant's responsibility to request that a graduate transcript be submitted directly from the educational institution to the Board's Administrative Office. The transcript must show that graduation with at least a master's level degree has been completed, and must carry the official seal of the institution.
 - (b) A minimum of three hundred and seventy-five (375) clock hours of supervised clinical experience (practicum) with individuals having a variety of communications disorders, as required by ASHA. The experience shall have been obtained through an accredited college or university which is recognized by ASHA. Unless already provided pursuant to rule 1370-1-.10, the applicant shall cause the Department Chair or other program head to provide directly to the Board's Administrative Office a letter attesting to the standards of the practicum and the applicant's successful completion.
 - (c) A Clinical Fellowship in the area in which licensure is being sought. The applicant shall cause the supervising Speech Language Pathologist or Audiologist to submit directly to the Board's Administrative Office a letter which attests to the Clinical Fellowship pursuant to Rule 1370-1-.10.
 - (d) The examination for licensure pursuant to Rule 1370-1-.08. When the examination has been successfully completed, the applicant shall cause the examining agency to submit directly to the Board's Administrative Office documentation of the successful completion of the examination.
- (8) When necessary, all required documents shall be translated into English and such translation, together with the original document, shall be certified as to authenticity by the issuing source. Both versions must be submitted simultaneously.
- (9) Reciprocity – If the applicant is licensed or was ever licensed in another state, the applicant shall cause the appropriate licensing Board in each state in which he holds or has held a license to send directly to the Board an official statement which indicates the condition of his license in such other state, including the date on which he was so licensed and under what provision such license was granted (i.e. certificate of clinical competence, examination, reciprocity, grandfathering, etc.)
- (10) A speech language pathologist or audiologist who holds an ASHA certification or equivalent, or holds a doctor of audiology degree (AuD) from an accredited institution of higher learning and has passed the examination required for licensure under § 63-17-110 (b) (2), or is licensed in another

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state and who has made application to the Board for a license in the State of Tennessee, may perform activities and services of a speech language pathology or audiological nature without a valid license pending disposition of the application. For purposes of this rule, "pending disposition of the application" shall mean a Board member or the Board's designee has determined the application is complete and the applicant has received written authorization from the Board member or the Board designee to commence practice, pursuant to T.C.A. § 63-1-142.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-110, 63-17-111, 63-17-112, 63-17-113, 63-17-115, and 63-17-117.

Rule 1370-1-.06, Fees, is amended by deleting parts (3) (d) 4. and (3) (d) 5. in their entirety and substituting instead the following language, and is further amended by adding the following language as new parts (3) (d) 6. and (3) (d) 7., so that as amended, the new parts (3) (d) 4., (3) (d) 5., (3) (d) 6. and (3) (d) 7. shall read:

(3) (d) 4.	Initial Registration Fee	10.00
(3) (d) 5.	Late Renewal Fee	25.00
(3) (d) 6.	Registration Renewal Fee	25.00
(3) (d) 7.	State Regulatory Fee (initial and biennial)	10.00

Authority: T.C.A. § 4-3-1011, 4-5-202, 4-5-204, 63-17-105, and Public Chapter 330 of the Public Acts of 2005.

Rule 1370-1-.08, Examinations, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (5) in its entirety, so that as amended, the new paragraph (3) shall read:

- (3) The Board adopts the Specialty Area Tests in Speech-Language Pathology and Audiology of the Professional Assessments for Beginning Teachers (Praxis Test), or its successor examination, as its licensure examination. Successful completion of examination is a prerequisite to licensure, pursuant to Rule 1370-1-.05.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, and 63-17-110.

Rule 1370-1-.09, Renewal of License, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (a), and part (1) (b) 2. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (c) but not its parts and substituting instead the following language, and is further amended by deleting subparagraph (1) (d) and paragraph (2) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (3) (a) in its entirety and substituting instead the following language, and is further amended by subparagraph (3) (b) but not is parts and substituting instead the following language, and is further amended by deleting parts (3) (b) 3. and (3) (b) 4. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (c) in its entirety, so that as amended, the new catchline, subparagraph (1) (a), part (1) (b) 2. subparagraph (1) (c) but not its parts, subparagraph (1) (d), paragraph (2), paragraph (3) but not its subparagraphs, subparagraph (3) (a), subparagraph (3) (b) but not is parts, and parts (3) (b) 3. and (3) (b) 4. shall read:

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1370-1-.09 RENEWAL OF LICENSE OR REGISTRATION.

- (1) (a) The due date for license and registration renewal is the expiration date indicated on the renewal certificate.
- (1) (b) 2. Paper Renewals - For individuals who have not renewed their license or registration online via the Internet, a renewal application form will be mailed to each individual licensed or registered by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee or registrant from the responsibility of meeting all requirements for renewal.
- (1) (c) To be eligible for license or registration renewal, an individual must submit to the Board's Administrative Office on or before the due date for renewal all of the following:
- (1) (d) Licensees and registrants who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses or registrations processed pursuant to rule 1200-10-1-.10.
- (2) Exemption from Licensure or Registration Renewal - A licensee or registrant who does not plan to practice in Tennessee and who therefore does not intend to use the applicable titles "speech language pathologist," "audiologist," "speech language pathology assistant," or any title which conveys to the public that he/she is currently licensed or registered by the Board may apply to convert an active license or registration to retired, or inactive, status. These licensees and registrants must comply with the requirements of Rule 1370-1-.11.
- (3) Reinstatement of an Expired License or Registration.
 - (3) (a) Licensees and registrants who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licensure or registration processed pursuant to Rule 1200-10-1-.10.
 - (3) (b) Reinstatement of a license or registration that has expired for less than five (5) years may be accomplished upon meeting the following conditions:
 - (3) (b) 3. Provide documentation of successfully completing continuing education requirements for every year the license or registration was expired, pursuant to Rule 1370-1-.12.
 - (3) (b) 4. License and registration reinstatement applications hereunder shall be treated as license and registration applications, and review and decisions shall be governed by Rule 1370-1-.07.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-116, and Public Chapter 330 of the Public Acts of 2005.

Rule 1370-1-.10, Clinical Fellowships and Supervision, is amended by adding the following language as new subparagraphs (5) (d), (5) (e), and (5) (f):

- (5) (d) A licensee who supervises three (3) individuals may provide alternate supervision to one (1) additional Speech Language Pathology Assistant or Clinical Fellow.
- (5) (e) A licensee who supervises two (2) individuals may provide alternate supervision to two (2) additional Speech Language Pathology Assistants or Clinical Fellows.

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- (5) (f) A licensee who supervises one (1) individual may provide alternate supervision to three (3) additional Speech Language Pathology Assistants or Clinical Fellows.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-103, 63-17-105, and 63-17-114.

Rule 1370-1-.10, Clinical Fellowships and Supervision, is amended by deleting paragraph (1) but not its subparagraphs, 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 paragraph (1) but not its subparagraphs shall read:

- (1) Clinical Fellows must work under the supervision of a licensed or ASHA certified Speech Language Pathologist or Audiologist ('supervising licensee').

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-103, 63-17-105, and 63-17-114.

Rule 1370-1-.11, Retirement and Reactivation of License, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by designating the language of paragraph (1) as subparagraph (1) (a), and is further amended by adding the following language as subparagraph (1) (b), and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by deleting paragraphs (3) and (4) in their entirety and substituting instead the following language, so that as amended, the new catchline, subparagraph (1) (b), paragraph (2) but not its subparagraphs, paragraph (3), and paragraph (4) shall read:

1370-1-.11 RETIREMENT AND REACTIVATION OF LICENSE OR REGISTRATION.

- (1) (b) A registrant who holds a current registration and does not intend to practice as a Speech Language Pathology Assistant may apply to convert an active registration to an Inactive-Retired status. Such registrant who holds a retired registration may not practice and will not be required to pay the renewal fee.
- (2) A person who holds an active license or registration may apply for retired status in the following manner:
- (3) A licensee or registrant who holds a retired license or registration may apply to reactivate his license or registration in the following manner:
- (a) Submit a written request for licensure or registration reactivation to the Board's Administrative Office;
- (b) Pay the licensure or registration renewal fee and state regulatory fee as provided in Rule 1370-1-.06; and
- (c) Provide documentation of successfully completing continuing education requirements, pursuant to Rule 1370-1-.12.
- (4) License and registration reactivation applications shall be treated as licensure and registration applications, and review decisions shall be governed by Rule 1370-1-.07.

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Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-116, 63-17-124, and Public Chapter 330 of the Public Acts of 2005.

Rule 1370-1-.12, Continuing Education, is amended by deleting the introductory sentence and substituting instead the following language, and is further amended by deleting subparagraph (1) (b) but not its parts and substituting instead the following language, and is further amended by deleting part (1) (e) 1. in its entirety and substituting instead the following language, and is further amended by adding the following language as part (1) (e) 2. and renumbering the present part (1) (e) 2. as (1) (e) 3., and is further amended by deleting subparagraph (1) (g), paragraph (2), subparagraph (3) (a), and paragraph (4) in their entirety and substituting instead the following language, so that as amended, the new introductory sentence, subparagraph (1) (b) but not its parts, part (1) (e) 1., part (1) (e) 2., subparagraph (1) (g), paragraph (2), subparagraph (3) (a), and paragraph (4) shall read:

1370-1-.12 CONTINUING EDUCATION. All Speech Language Pathologists, Audiologists, and Speech Language Pathology Assistants must comply with the following continuing education rules as a prerequisite to licensure and registration renewal.

- (1) (b) The Board does not pre-approve continuing education programs. It is the responsibility of the licensee or registrant, using his/her professional judgment, to determine whether or not the continuing education course is applicable and appropriate and meets the guidelines specified in this rule. Continuing education credit will not be allowed for the following:
 - (1) (e) 1. For Speech Language Pathologists and Audiologists, a maximum of five (5) hours of the ten (10) hours required in subparagraph (a) may be granted for multi-media courses during each calendar year.
 - (1) (e) 2. For Speech Language Pathology Assistants, all of the hours required in subparagraph (b) may be granted for multi-media courses during each calendar year.
 - (1) (g) To be considered for a waiver of continuing education requirements, or for an extension of the deadline to complete the continuing education requirements, a licensee or registrant must request such in writing with supporting documentation before the end of the calendar year in which the continuing education requirements were not met.
- (2) Documentation - Proof of Compliance.
 - (a) Each licensee and registrant must retain documentation of attendance and completion of all continuing education. If asked by the Board for inspection and/or verification purposes, the licensee or registrant must produce one (1) of the following:
 - 1. Verification of continuing education by evidencing certificates which verify attendance at continuing education program(s); or
 - 2. An original letter on official stationery from the continuing education's program's sponsor verifying the continuing education and specifying date, hours of actual attendance, program title, licensee or registrant name and number.
 - (b) Each licensee and registrant on the biennial renewal form must attest to completion of the required continuing education hours and that such hours were obtained during the two (2) calendar years (January 1 - December 31) that precede the licensure or registration renewal year.

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- (c) Each licensee and registrant shall maintain, for a period of not less than four (4) years, all documentation pertaining to continuing education.
- (3) (a) Any licensee or registrant 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 pursuant to Rule 1370-1-.13.
 - 1. 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 warrants the intended action.
 - 2. The licensee or registrant has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license or registration.
 - 3. Any licensee or registrant who fails to show compliance with the required continuing education hours in response to the notice contemplated by part (3) (a) 1. above may be subject to disciplinary action.
- (4) Continuing Education for Reactivation of Retired or Expired Licenses and Registrations.
 - (a) Reactivation of a Retired License or Registration. An individual whose license or registration has been retired must complete continuing education requirements for each year the license or registration was retired as a prerequisite to reinstatement. Those hours will be considered replacement hours and cannot be counted during the next licensure or registration renewal period.
 - (b) Reactivation of an Expired License or Registration. Continuing education hours obtained as a prerequisite for reactivating an expired license or registration may not be counted toward the current calendar year continuing education requirement.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-116, 63-17-124, and Public Chapter 330 of the Public Acts of 2005.

Rule 1370-1-.12, Continuing Education, is amended by adding the following language as new subparagraph (1) (b) and renumbering the remaining subparagraphs accordingly:

- (1) (b) All Speech Language Pathology Assistants must complete a minimum of five (5) hours of continuing education during each calendar year. For new registrants, submitting proof of successful completion during the twelve (12) months preceding registration of all education and training requirements required for registration in Tennessee, pursuant to Rule 1730-1-.14, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the initial period of registration.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-116, 63-17-124, and Public Chapter 330 of the Public Acts of 2005.

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Rule 1370-1-.13, Unprofessional and Unethical Conduct, is amended by deleting the introductory language and substituting instead the following language, and is further amended by deleting paragraphs (1), (8), (9), and (13) in their entirety and substituting instead the following language, so that as amended, the new introductory language and the new paragraphs (1), (8), (9), and (13) shall read:

1370-1-.13 UNPROFESSIONAL AND UNETHICAL CONDUCT. The Board has the authority to refuse to issue a license or registration, or may suspend, revoke, or condition a license or registration for a period of time, or assess by monetary fine any person holding license to practice as a Speech Language Pathologist, or Audiologist, or registration as a Speech Language Pathology Assistant. In addition to the statute at T.C.A. § 63-17-117, unprofessional and/or unethical conduct, shall include, but not be limited to the following:

- (1) Engaging in clinical work when the licensee or registrant is not properly qualified to do so, pursuant to Rules 1370-1-.04 and 1370-1-.14, by successful completion of training, course work and/or supervised practicum;
- (8) Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as a Speech Language Pathologist, Audiologist, or Speech Language Pathology Assistant;
- (9) Engaging in the practice as a Speech Language Pathologist, Audiologist, or Speech Language Pathology Assistant under a false or assumed name, or the impersonation of another practitioner under a like, similar or different name;
- (13) Supervising a quantity of assistants or clinical fellows inconsistent with the provisions of Rules 1370-1-.10 and/or 1370-1-.14.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-114, 63-17-117, and Public Chapter 330 of the Public Acts of 2005.

Rule 1370-1-.14, Speech Language Pathology Assistants and Supervision, is amended by adding the following language as new parts (2) (h) 4., (2) (h) 5., and (2) (h) 6.

- (2) (h) 4. A licensee who supervises three (3) individuals may provide alternate supervision to one (1) additional Speech Language Pathology Assistant or Clinical Fellow.
- (2) (h) 5. A licensee who supervises two (2) individuals may provide alternate supervision to two (2) additional Speech Language Pathology Assistants or Clinical Fellows.
- (2) (h) 6. A licensee who supervises one (1) individual may provide alternate supervision to three (3) additional Speech Language Pathology Assistants or Clinical Fellows.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-103, 63-17-105, and 63-17-114.

Rule 1370-1-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs, and Subpoenas, is amended by deleting paragraph (1) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraphs (1) (a), (1) (b), (1) (c), (1) (d), (1) (e) and (4) (b) in their entirety

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and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs, and the new subparagraphs (1) (a), (1) (b), (1) (c), (1) (d), (1) (e) and (4) (b) shall read:

- (1) Upon a finding by the Board that the Speech Language Pathologist, Audiologist, or Speech Language Pathology Assistant has violated any provision of the Tennessee Code Annotated §§ 63-17-101, et seq., or the rules promulgated thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense:
 - (1) (a) Advisory Censure - This is a written action issued to the Speech Language Pathologist, Audiologist or Speech Language Pathology Assistant for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
 - (1) (b) Formal Censure or Reprimand - This is a written action issued to a Speech Language Pathologist, Audiologist or Speech Language Pathology Assistant for one (1) time and less severe violations. It is a formal disciplinary action which must be accepted by the Speech Language Pathologist, Audiologist or Speech Language Pathology Assistant and ratified by the Board.
 - (1) (c) Probation - This is a formal disciplinary action which places a Speech Language Pathologist, Audiologist or Speech Language Pathology Assistant on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
 - (1) (d) Licensure or Registration Suspension - This is a formal disciplinary action which suspends the right to practice for a fixed period of time. It contemplates the re-entry into practice under the licensure or registration previously issued.
 - (1) (e) Licensure or Registration Revocation - This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license or registration previously issued. If revoked, it relegates the violator to the status he possessed prior to application for licensure or registration. An application for the reinstatement of a revoked license or registration shall be treated as a new application for licensure or registration which shall not be considered by the Board prior to the expiration of at least one (1) year, unless otherwise stated in the Board's revocation order.
- (4) (b) Schedule of Civil Penalties.
 1. A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed or registered by the Board guilty of a willful and knowing violation of the Act, or regulations pursuant thereto, to such an extent that there is, or is likely to be, an imminent substantial threat to the health, safety, and welfare of an individual client or the public. For purposes of this section, willfully and knowingly practicing as a Speech Language Pathologist, Audiologist or Speech Language Pathology Assistant without a license, registration, or an exempted classification, constitutes a violation for which a Type A Civil Penalty shall be assessed.
 2. A Type B Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed or registered by the Board guilty of a violation of the Act, or regulations pursuant thereto, in such a manner as to impact directly on the care of clients or the public.

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3. A Type C Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed or registered by the Board guilty of a violation of the Act, or regulations pursuant thereto, which is neither directly detrimental to the client or the public, nor directly impacts their care, but which only has an indirect relationship to the care of clients or the public.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-134, 63-17-105, 63-17-117, 63-17-118, 63-17-119, 63-17-120, and Public Chapter 330 of the Public Acts of 2005.*

Rule 1370-1-.16, Display/Replacement of Licenses, is amended by deleting the catchline and paragraph (1) in their entirety and substituting instead the following language, so that as amended, the new catchline and the new paragraph (1) shall read:

1370-1-.16 DISPLAY/REPLACEMENT OF LICENSE OR REGISTRATION.

- (1) Display of License or Registration- Every person licensed or registered by the Board shall display his license or registration in a conspicuous place in his office and, whenever required, exhibit such license or registration to the Board or its authorized representative.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-109, 63-17-105, and Public Chapter 330 of the Public Acts of 2005.*

Rule 1370-1-.17, Change of Address and/or Name, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (1), (2), and (3) shall read:

- (1) Before practicing as a Speech Language Pathologist, Audiologist or Speech Language Pathology Assistant, the licensee or registrant shall notify the Board's Administrative Office, in writing, of the address of his/her primary business.
- (2) If any changes occur in the address of his/her place of business, the licensee or registrant must notify the Board's Administrative Office, in writing, within thirty (30) days of such change; such written notification must reference the licensee' or registrant name, profession, and number. Failure to give such notice of business address change shall be deemed just cause for disciplinary action by the Board.
- (3) If any changes occur in the licensee's or registrant's name, the licensee or registrant must notify the Board's Administrative Office within thirty (30) days of the name change. Said notification must be made in writing and must also reference the licensee or registrant prior name and number. A copy of the official document evidencing the name change must be forwarded with the written notification.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-1-108, 63-17-105, and Public Chapter 330 of the Public Acts of 2005.*

Rule 1370-1-.19 Board Meetings, Officers, Consultants, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new catchline and the new paragraph (5) shall read:

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1370-1-.19 BOARD MEETINGS, OFFICERS, CONSULTANTS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (5) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-17-105, 63-17-117, 63-117-118, and Public Chapter 234 of the Public Acts of 2005.

Rule 1370-1-.20, Advertising, is amended by deleting the language of this rule in its entirety and substituting instead the following language as new paragraph (1), (2), (3), (4), (5), and (6):

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning communications disorder services, the importance of the interests affected by the choice of a Speech Language Pathologist or Audiologist and the foreseeable consequences of unrestricted advertising by Speech Language Pathologists or Audiologists which is recognized to pose special possibilities for deception, require that special care be taken by Speech Language Pathologists or Audiologists to avoid misleading the public. The Speech Language Pathologist or Audiologist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by Speech Language Pathologists or Audiologists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
 - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of a Speech Language Pathologist or Audiologist who is licensed to practice in Tennessee.
 - (b) Licensee - Any person holding a license to practice speech language pathology and/or audiology in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
 - (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
 - (e) Discounted Fee - Shall mean a fee offered or charged by a person or product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".
- (3) Advertising Fees and Services

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- (a) Fixed Fees - Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
 - (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
 - (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
 - (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
 - (e) Time Period of Advertised Fees.
 - 1. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 - 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-17-214 (a) (2).
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.

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- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Board may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
- (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.

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- (r) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisement are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-17-105, 63-17-214 (a) (2), and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2005. (08-62)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Board of Communications Disorders and Sciences' Council for Licensing Hearing Instrument Specialists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, and 63-17-203. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 17th day of October, 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 1370-2-.08, Examinations, is amended by adding the following language as new parts (1) (b) 2. and (2) (b) 2., and by renumbering the present parts (1) (b) 2. and (2) (b) 2. as parts (1) (b) 3. and (2) (b) 3.:

- (1) (b) 2. Applicants may be required to bring the following to the practical skills examination:
 - (i) An audiometer, audiogram forms, and proof of the audiometer's current calibration; and
 - (ii) An otoscope; and
 - (iii) All materials needed to make an ear impression; and
 - (iv) Equipment needed to program, troubleshoot, or modify hearing instruments and ear molds; and
 - (v) Red and blue ink pens; and
 - (vi) An individual to be the subject for the ear impression and the hearing test.
- (2) (b) 2. Applicants may be required to bring the following to the practical skills examination:
 - (i) An audiometer, audiogram forms, and proof of the audiometer's current calibration; and

RULEMAKING HEARINGS

- (ii) An otoscope; and
- (iii) All materials needed to make an ear impression; and
- (iv) Equipment needed to program, troubleshoot, or modify hearing instruments and ear molds; and
- (v) Red and blue ink pens; and
- (vi) An individual to be the subject for the ear impression and the hearing test.

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

Rule 1370-2-.12, Continuing Education is amended by deleting subparagraph (4) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (4) (a) shall read:

- (4) (a) Reactivation of a Retired License.
 - 1. 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 as a prerequisite to reactivation. Those hours will be considered replacement hours and cannot be counted during the next licensure renewal period.
 - 2. An individual who requests reactivation of a license which has been retired for two (2) or more years must submit, along with the reactivation request, verification which indicates the attendance and completion of twenty (20) hours of continuing education. The continuing education hours must have been started and successfully completed within the two (2) years immediately preceding the date of the requested reactivation.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-203, and 63-17-214.

Rule 1370-2-.19 Council Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new catchline and the new paragraph (5) shall read:

1370-2-.19 COUNCIL MEETINGS, OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (5) Screening Panels - The Council adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-17-105, 63-17-203, 63-17-219, 63-17-220, and Public Chapter 234 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 1370-2-.20, Advertising, is amended by deleting the language of the rule in its entirety, and is further amended by adding the following language as new paragraphs (1) and (2):

- (1) All advertisements shall adhere to the proscriptions specifically set out in Rule 1370-2-.13 governing Unethical Conduct.
- (2) Advertising Records and Responsibility
 - (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of one (1) year from the last date of broadcast or publication and be made available for review upon request by the Council or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-17-105, and 63-17-203, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 4th day of August , 2005. (08-10)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules and new rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 4th day of November, 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 0450-1-.01, Advertising, 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:

Advertising - Includes, but is not limited to, the business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory, or other printed matter. Advertising also includes paid or unpaid public statements, brochures, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials, and business solicitations communicated by individual, radio, video, or television broadcasting or any other means designed to secure public attention.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-117, and Public Chapter 467 of the Public Acts of 2005.

Rule 0450-1-.03, Necessity of Licensure or Certification, is amended by adding the following language as paragraph (6) and renumbering the present paragraph (6) as paragraph (7):

(6) Use of Titles -

- (a) Any person who possesses a valid, unsuspended and unrevoked certificate issued by the Board has the right to use the title "Certified Professional Counselor" and to practice professional counseling, as defined in Rule 0450-1-.01.

RULEMAKING HEARINGS

- (b) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Licensed Professional Counselor" and to practice professional counseling, as defined in T.C.A. § 63-22-150.
- (c) Violation of this rule or T.C.A. §§ 63-22-117 regarding use of titles shall constitute unprofessional and/or unethical conduct and subject the licensee or certificate holder to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-110, 63-22-117, 63-22-150, and Public Chapter 467 of the Public Acts of 2005.

Rule 0450-1-.19, Board Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (10), so that as amended, the new catchline and the new paragraph (10) shall read:

0450-1-.19, BOARD MEETINGS, OFFICERS, CONSULTANTS, RECORDS, AND DECLARATORY ORDERS, AND SCREENING PANELS.

- (10) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 63-1-138, 63-22-102, 63-22-110, and Public Chapter 234 of the Public Acts of 2005.

Rule 0450-2-.01, Advertising, 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:

Advertising - Includes, but is not limited to, the business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory, or other printed matter. Advertising also includes paid or unpaid public statements, brochures, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials, and business solicitations communicated by individual, radio, video, or television broadcasting or any other means designed to secure public attention.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-115, and Public Chapter 467 of the Public Acts of 2005.

Rule 0450-2-.03, Necessity of Licensure or Certification, is amended by adding the following language as paragraph (6):

- (6) Use of Titles -
 - (a) Any person who possesses a valid, unsuspended and unrevoked certificate issued by the Board has the right to use the title "Certified Marital and Family Therapist" and to practice marital and family therapy, as defined in Rule 0450-2-.01.

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- (b) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title “Licensed Marital and Family Therapist” and to practice marital and family therapy, as defined in T.C.A. § 63-22-115.
- (c) Violation of this rule or T.C.A. §§ 63-22-115 regarding use of titles shall constitute unprofessional and/or unethical conduct and subject the licensee or certificate holder to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-110, 63-22-115, and Public Chapter 467 of the Public Acts of 2005.

Rule 0450-2-.19, Board Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (10), so that as amended, the new catchline and the new paragraph (10) shall read:

0450-2-.19, BOARD MEETINGS, OFFICERS, CONSULTANTS, RECORDS, AND DECLARATORY ORDERS, AND SCREENING PANELS.

- (10) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 63-1-138, 63-22-102, 63-22-110, and Public Chapter 234 of the Public Acts of 2005.

Rule 0450-3-.03, Necessity of Licensure, is amended by adding the following language as paragraph (4):

- (4) Use of Titles
 - (a) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title “Licensed Clinical Pastoral Therapists” and to practice clinical pastoral therapy, as defined in T.C.A. § 63-22-201.
 - (b) Violation of this rule or T.C.A. §§ 63-22-201 regarding use of titles shall constitute unprofessional and/or unethical conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-201, 63-22-202, and Public Chapter 467 of the Public Acts of 2005.

Rule 0450-3-.19, Board Officers, Consultants, Records, Complaints, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new catchline and the new paragraph (10) shall read:

0450-3-.19, BOARD OFFICERS, CONSULTANTS, RECORDS, COMPLAINTS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (5) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

RULEMAKING HEARINGS

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 63-1-138, 63-22-102, 63-22-110, and Public Chapter 234 of the Public Acts of 2005.

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0450-1-.21 ADVERTISING.

- (1) Definitions
 - (a) Advertising – See Rule 0450-1-.01 (2).
 - (b) Certificate Holder - Any person holding a certificate to practice as a Certified Professional Counselor. Where applicable this shall include partnerships and/or corporations.
 - (c) Licensee - Any person holding a license to practice as a Licensed Professional Counselor. Where applicable this shall include partnerships and/or corporations.
 - (d) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
- (2) Advertising Content. The following acts or omissions in the context of advertisement by any licensee or certificate holder shall constitute unethical conduct, and subject the licensee or certificate holder to disciplinary action pursuant to T.C.A. § 63-23-110:
 - (a) Claims that the services performed, personnel employed, or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee or certificate holder is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned degree.
 - (c) Promotion of professional services which the licensee or certificate holder knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee or certificate holder that is not reasonably verifiable.

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- (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee or certificate holder can achieve.
 - (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Misrepresentation of credentials, training, experience, or ability.
 - (l) Failure to include the corporation, partnership or individual name, address, and telephone number of licensees and certificate holders in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees and certificate holders practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees and certificate holders practicing at that location; and
 - 2. Maintain and conspicuously display a directory listing all licensees and certificate holders practicing at that location.
 - (m) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (n) After thirty (30) days of the licensee's or certificate holder's departure, the use of the name of any licensee or certificate holder formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (o) Stating or implying that a certain licensee or certificate holder provides all services when any such services are performed by another licensee.
 - (p) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
 - (q) Making false, deceptive, misleading or fraudulent statements regarding fees.
- (3) Advertising Records and Responsibility
- (a) Each licensee or certificate holder who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed or certified professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the licensee or certificate holder named therein.

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- (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee or certificate holder for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee or certificate holder must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (4) Advertising Conduct
- (a) Licensees or certificate holders who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.
 - (b) If licensees or certificate holders learn of deceptive statements about their work made by others, licensees or certificate holders make reasonable efforts to correct such statements.
 - (c) Licensees or certificate holders do not compensate employees of press, radio, television or other communication media in return for publicity in a news item.
 - (d) A paid advertisement relating to the licensee's or certificate holders' activities must be identified as such, unless it is already apparent from the context.
- (5) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-110, 63-22-117, 63-22-150, and Public Chapter 467 of the Public Acts of 2005.

0450-2-.21 ADVERTISING.

- (1) Definitions
 - (a) Advertising - See Rule 0450-2-.01 (2).
 - (b) Certificate Holder - Any person holding a certificate to practice as a Certified Marital and Family Therapist. Where applicable this shall include partnerships and/or corporations.
 - (c) Licensee - Any person holding a license to practice as a Licensed Marital and Family Therapist. Where applicable this shall include partnerships and/or corporations.

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- (d) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
- (2) Advertising Content. The following acts or omissions in the context of advertisement by any licensee or certificate holder shall constitute unethical conduct, and subject the licensee or certificate holder to disciplinary action pursuant to T.C.A. § 63-23-110:
- (a) Claims that the services performed, personnel employed, or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee or certificate holder is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned degree.
 - (c) Promotion of professional services which the licensee or certificate holder knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee or certificate holder that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee or certificate holder can achieve.
 - (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Misrepresentation of credentials, training, experience, or ability.
 - (l) Failure to include the corporation, partnership or individual name, address, and telephone number of licensees and certificate holders in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees and certificate holders practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees and certificate holders practicing at that location; and
 - 2. Maintain and conspicuously display a directory listing all licensees and certificate holders practicing at that location.

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- (m) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (n) After thirty (30) days of the licensee's or certificate holder's departure, the use of the name of any licensee or certificate holder formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (o) Stating or implying that a certain licensee or certificate holder provides all services when any such services are performed by another licensee.
 - (p) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
 - (q) Making false, deceptive, misleading or fraudulent statements regarding fees.
- (3) Advertising Records and Responsibility
- (a) Each licensee or certificate holder who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed or certified professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the licensee or certificate holder named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee or certificate holder for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee or certificate holder must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (4) Advertising Conduct
- (a) Licensees or certificate holders who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.
 - (b) If licensees or certificate holders learn of deceptive statements about their work made by others, licensees or certificate holders make reasonable efforts to correct such statements.
 - (c) Licensees or certificate holders do not compensate employees of press, radio, television or other communication media in return for publicity in a news item.

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- (d) A paid advertisement relating to the licensee's or certificate holders' activities must be identified as such, unless it is already apparent from the context.
- (5) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-110, 63-22-115, and Public Chapter 467 of the Public Acts of 2005.

0450-3-.21 ADVERTISING.

- (1) Definitions
 - (a) Advertising - Includes but is not limited to paid or unpaid public statements, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.
 - (b) Licensee - Any person holding a license to practice as a Licensed Clinical Pastoral Therapist. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of practitioners to serve his or her particular needs.
- (2) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unethical conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-23-110:
 - (a) Claims that the services performed, personnel employed, or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned degree.
 - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.

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- (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
 - (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Misrepresentation of credentials, training, experience, or ability.
 - (l) Failure to include the corporation, partnership or individual name, address, and telephone number of licensees in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees practicing at that location; and
 - 2. Maintain and conspicuously display a directory listing all licensees practicing at that location.
 - (m) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (n) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (o) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (p) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
 - (q) Making false, deceptive, misleading or fraudulent statements regarding fees.
- (3) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed or certified professional employees acting as an agent of such firm or entity.

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- (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Board or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.
- (4) Advertising Conduct
- (a) Licensees who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.
 - (b) If licensees learn of deceptive statements about their work made by others, licensees or certificate holders make reasonable efforts to correct such statements.
 - (c) Licensees do not compensate employees of press, radio, television or other communication media in return for publicity in a news item.
 - (d) A paid advertisement relating to the licensee's activities must be identified as such, unless it is already apparent from the context.
- (5) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-201, 63-22-202, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of August, 2005. (08-41)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments of rules on behalf of the Tennessee Solid Waste Disposal Control Board pursuant to T.C.A. §§ 68-203-103(a)(1), (68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d), 68-211-116, 68-211-851(a) and 68-211-861. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 - 5 - 204 and will take place at the following location, time, and date:

Location	Time	Date
5 th Floor Large Conference Room L & C Tower 401 Church Street Nashville, TN	1:00 p.m. CST	November 2, 2005

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

For a copy of the entire text of this notice of rulemaking hearing or for directions to the hearing location, contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874, FAX 615-532-0886. Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Greg Luke prior to or following the public hearing. However, such written comments must be received in the Division's Central Office by 4:30 p.m. CST, November 4, 2005 in order to assure consideration. The "DRAFT" rules may also be accessed for review at the Department's World Wide Web Site located at "<http://www.state.tn.us/environment/swm/swmppo/>".

The Division of Solid Waste Management has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review in the Public Access Areas of the following Departmental Environmental Field Offices:

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

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

Knoxville Environmental Field Office
State Plaza, Suite 220
2700 Middlebrook Pike
Knoxville, TN 37921-5602
865-594-6035/1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
615-687-7000/1-888-891-8332

RULEMAKING HEARINGS

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
423-854-5400/1-888-891-8332

Jackson Environmental Field Office
362 Carriage House Drive
Jackson, TN 38305-2222
731-512-1300/1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38501
931-432-4015/1-888-891-8332

Columbia Environmental Field Office
2484 Park Plus Drive
Columbia, TN 38401
931-380-3371/1-888-891-8332

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

E. G. Fisher Public Library
1289 Ingleside Avenue
Athens, TN 37303
423-745-7782

Clarksville-Montgomery Cty. Public Library
350 Pageant Lane, Suite 501
Clarksville, TN 37040-0005
931-648-8826

Hardin County Library
1365 Pickwick St. S.
Savannah, TN 38372
731-925-4314

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

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

Kingsport Public Library & Archives
400 Broad Street
Kingsport, TN 37660-4292
423-229-9489

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

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

SUBSTANCE OF PROPOSED RULES

Paragraph (2) of rule 1200-1-7-.01 Solid Waste Disposal Control System: General is amended by adding the following definition into the current list alphabetically:

“Putrescible Wastes” means solid wastes that contain organic matter capable of being decomposed by micro-organisms and of such a character and proportion as to be capable of attracting or providing food for birds.

Authority: T.C.A. §§ 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d)(1).

Subpart (i) of part 1 of subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new item (XXIV) to read as follows:

(XXIV) The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet

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(1,524 meters) of any airport runway end used only by piston-type aircraft must include in the permit-by-rule notification a demonstration that the facility does not pose a bird hazard to aircraft. The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.

Item (II) of subpart (v) of part 1 of subparagraph (c) of paragraph 1 of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing and Disposal Facilities is amended by deleting the current item (II) and substituting the following language:

- (II) The facility is constructed, operated, maintained, and closed in a manner consistent with items II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVIII, XIX, XX, XXI, and XXIV of rule 1200-1-7-.02(1)(c)1(i).

Subpart (ii) of part 2 of subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new item (VIII) to read as follows:

- (VIII) A design plan attached indicating boundaries of the site and all on-site appurtenances.

Part 2 of subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new subpart (iii) to read as follows:

- (iii) The notification under subpart (ii) shall be revised within 30 days of a change in facility ownership with new information as necessary but at a minimum to include changes to subitems (III) and (IV) along with payment of the fee specified at 1200-1-7-.07(2)(b)6.

Subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new part 3 to read as follows:

- 3. Duty to Comply - The permittee must comply with all conditions of this permit-by-rule, unless otherwise authorized by the Department in writing. Any permit-by-rule non-compliance constitutes a violation of the Act and is grounds for the assessment of civil penalties by the Commissioner.

Subpart (i) of part 1 of subparagraph (e) of paragraph (3) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new item (IV) to read as follows:

- (IV) A change of ownership.

Part 1 of Subparagraph (a) of paragraph (4) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting the current part 1 and substituting the following language to read:

- 1. Duty to Comply - The permittee must comply with all conditions of this permit, unless otherwise authorized by the Department in writing. Any permit noncompliance constitutes a violation of the Act and is grounds for termination, revocation and/or reissuance, or modification of the permit and/or the assessment of civil penalties by the Commissioner.

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Authority: T.C.A. §§ 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d)(1).

Subparagraph (j) of paragraph (3) of rule 1200-1-7-.03 Requirements for Financial Assurance is amended by adding a new part 5 to read as follows:

5. All forfeited funds shall be deposited in a special account within the Tennessee Environmental Protection Fund for use by the Commissioner as set forth in T.C.A. §§ 68-211-116 of the Act and 68-203-101 et seq.

Authority: T.C.A. §§ 68-211-111(d)(1) and 68-211-116.

Item (IV) of subpart (iv) of part 6 of subparagraph (a) of paragraph (7) of rule 1200-1-7-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting the current item IV and substituting the following language:

- (IV) Include provisions for identifying all domestic and commercial water use within an area determined by the Commissioner.

Subparagraph (g) of paragraph (8) of rule 1200-1-7-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by adding a new part 8 to read as follows:

8. If the dump closed on-site after an order has been issued by the Commissioner or Board and has become final pursuant to T.C.A. §§ 68-211-113 or 4-5-322, the Commissioner may present for recording a notation on the deed to the property, or on some other instrument which is normally examined during title search that will in perpetuity notify any person conducting a title search that the land has been used as a disposal facility.

Authority: T.C.A. §§ 68-211-107(a) and 68-211-111(d)(1).

Subparagraph (a) of paragraph (2) of rule 1200-1-7-.07 Fee System For Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current subparagraph (a) and substituting the following language:

- (a) Any person who applies for a permit, permit-by-rule, or waste evaluation pursuant to part (1)(b)3 of this rule, shall pay the specified amount in subparagraph (b) of this paragraph with the application.

Authority: T.C.A. §§ 68-203-103(a)(1), 68-203-103(b)(3), 68-211-107(a) and 68-211-111(d)(2).

Subparagraph (a) of paragraph (3) of rule 1200-1-7-.09 Waste Disposal Reduction Goal is amended by deleting the current subparagraph (a) and substituting the following language:

- (a) A region's waste reduction plan shall be consistent with the guidelines issued by the Division. Such a plan shall explain the region's waste reduction methods. The region may use any combination of methods; however, the following methods or practices will not be considered in the calculation for the region's waste reduction plan:

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1. Incineration,
2. Unmarketed municipal solid waste compost,
3. Recovered materials (other than problem wastes) stored for recycling without being marketed as prescribed by rule 1200-1-7-.09(2)(b)3, and
4. Illegal or unauthorized storage or disposal of municipal solid waste.

Subparagraphs (d) and (e) of paragraph (3) of rule 1200-1-7-.09 Waste Disposal Reduction Goal are amended by deleting the current subparagraphs (d) and (e) and substituting the following language:

- (d) The region plan shall utilize the base year of 1995 for measuring waste reduction unless a region can demonstrate that the 1995 data is clearly in error. A region may receive credit toward the waste reduction goal from recycling and source reduction programs prior to 1995, but no earlier than 1995. The region shall notify in writing the Division Director of such an error and request approval of any adjustment to the 1995 data.
- (e) By March 31 of each year, each region shall submit an annual report to the Division. Pursuant to T.C.A. §§68-211-863 and 68-211-871, such reports shall include, at a minimum, the amount and type of recycled materials collected in the region.

Rule 1200-1-7-.09 Waste Reduction Goal is amended by adding a new paragraph (4) to read as follows:

(4) Qualitative Assessment Methods

- (a) An assessment method shall be developed by the Department of Environment and Conservation and approved by the Municipal Solid Waste Advisory Committee. This assessment will be applied to Municipal Solid Waste Planning Regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. §68-211-861(a) according to the 2003 Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the Municipal Solid Waste Planning Region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is due to factors beyond the control of the region.
- (b) The qualitative assessment shall be done in the following two steps:
 1. The Department shall use the waste and diversion reported by the solid waste region for the most current reporting period to determine whether in that year twenty-five percent of the solid waste generated in that year was either diverted from class I facilities or recycled. If it was, the region meets the qualitative assessment and the department does not proceed to the next step.
 2. The Department shall evaluate the programs in those regions that do not satisfy subparagraph (2)(a) above to determine if they are qualitatively equivalent to those that did meet the 25% recycling and diversion goal by evaluating at least the following solid waste program activities for the most current reporting period, giving the first two items the greatest weight:
 - (i) waste reduction and recycling programs and systems;
 - (ii) waste diversion programs and systems;

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- (iii) solid waste education programs and systems;
- (iv) waste collection and handling systems; and
- (v) solid waste program budgets and staffing.

The methodology shall make comparisons between regions that are as similar as possible in terms of population and socio-economic level to the region that failed to meet the goal.

Authority: T.C.A. §§ 68-211-111(d)(2) and 68-211-861.

Subparagraph (a) of paragraph (6) of rule 1200-1-7-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting the current subparagraph (a) and substituting the following language:

- (a) By March 31 of each year, each county which maintains and uses receptacles for the collection of municipal solid waste from the general public at sites separate from a convenience center, shall include the following information as part of the Solid Waste Region's annual report (which is submitted to the Division):
 - 1. The number of receptacles in the County;
 - 2. The location of all receptacles;
 - 3. Collection times for such receptacles; and
 - 4. Operation procedures and security measures adopted and enforced to maintain and service the receptacles and to ensure the protection of public health and safety. Such information in this part must be in the form of a narrative manual and meet the minimum requirements in subparagraph (b).

Authority: T.C.A. §§ 68-211-111(d)(2) and 68-211-851(a).

Part 3 subparagraph (a) of paragraph 4 of rule 1200-1-7-.11 Requirements For Compost and Composting Facilities is amended by deleting the current part 3 and substituting the following language:

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3. Compost shall be classified as either Type A Compost or Type B Compost according to its metal content characterization as shown in this part. Metal concentrations in finished compost shall not exceed the concentrations shown in Type B Compost below:

METAL CONSTITUENT	TYPE A COMPOST TOTAL METAL CONCENTRATION (PPM)	TYPE B COMPOST TOTAL METAL CONCENTRATION (PPM)
Arsenic	10	16
Cadmium	3	39
Chromium	210	1200
Cobalt	200	200
Copper	300	1500
Lead	100	250
Mercury	1.0	17
Molybdenum	10	18
Nickel	50	420
Selenium	3.0	36
Zinc	500	2800

Subpart (ii) of part 1 of subparagraph (c) of paragraph (4) of rule 1200-1-7-.11 Requirements for Compost and Composting Facilities is amended by deleting the current subpart (ii) and substituting the following language to read:

- (ii) In addition to (i) of this part all compost utilizing the solid waste classification at rule 1200-1-7-.11(4)(a)1(iii), shall be analyzed at intervals of every 20,000 tons of compost produced or every three months, whichever comes first, for:

Parameter	Unit	Method
All metals of Rule 1200-1-7-11(4)(a)3.	mg/kg of dry Weight	SW-846 Method
Foreign Matter	%	See 4 Below **
Fecal Coliform	most probable number	SM 9221***
Volatile Residue	mg/l	See 5 Below **
PCB	part per million*	SW-846 Method

* (detection above 1 ppm, the Commissioner shall be immediately notified by the operator and the source identified)

** Methods for Chemical Analysis of Water and Wastes (EPA-600/4-79-020), 1983.

*** Standard Methods For the Examination of Waste and Wastewater Online, 2005.

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Authority: T.C.A. §§ 68-211-102(a), 68-211-107(a), and 68-211-111(d)(1).

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of August, 2005. (08-36)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments of rules on behalf of the Tennessee Solid Waste Disposal Control Board pursuant to T.C.A. §§ 68-203-103(a)(1), 68-203-103(b)(3), 68-211-107(a), and 68-211-111(d)(2). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 - 5 - 204 and will take place at the following location, time, and date:

Location	Time	Date
5 th Floor Large Conference Room L & C Tower 401 Church Street Nashville, TN	1:00 p.m. CDT	October 26, 2005

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

For a copy of the entire text of this notice of rulemaking hearing or for directions to the hearing location, contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874, FAX 615-532-0886. Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Greg Luke prior to or following the public hearing. However, such written comments must be received in the Division's Central Office by 4:30 p.m. CST, November 9, 2005 in order to assure consideration. The "DRAFT" rules may also be accessed for review at the Department's World Wide Web Site located at "<http://www.state.tn.us/environment/swm/swmppo/>".

The Division of Solid Waste Management has prepared an initial draft rule for public review and comment. Copies of this initial draft rule are available for review in the Public Access Areas of the following Departmental Environmental Assistance Centers:

Memphis Environmental Assistance Center Suite E- 645, Perimeter Office Park 2510 Mount Moriah Road Memphis, TN 38115-1520 901-368-7939/1-888-891-8332	Chattanooga Environmental Assistance Center State Office Building, Suite 550 540 McCallie Avenue Chattanooga, TN 37402-2013 423-634-5745/1-888-891-8332
Knoxville Environmental Assistance Center State Plaza, Suite 220 2700 Middlebrook Pike Knoxville, TN 37921-5602 865-594-6035/1-888-891-8332	Nashville Environmental Assistance Center 711 R. S. Gass Blvd Nashville, TN 37243 615-687-7000/1-888-891-8332

RULEMAKING HEARINGS

Johnson City Environmental Assistance Center 2305 Silverdale Road Johnson City, TN 37601-2162 423-854-5400/1-888-891-8332	Jackson Environmental Assistance Center 362 Carriage House Drive Jackson, TN 38305-2222 731-512-1300/1-888-891-8332
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Cookeville Environmental Assistance Center 1221 South Willow Avenue Cookeville, TN 38501 931-432-4015/1-888-891-8332	Columbia Environmental Assistance Center 2484 Park Plus Drive Columbia, TN 38401 931-380-3371/1-888-891-8332
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Additional review copies only are available at the following library locations:

E. G. Fisher Public Library
1289 Ingleside Avenue
Athens, TN 37303
423-745-7782

Clarksville-Montgomery Cty. Public Library
350 Pageant Lane, Suite 501
Clarksville, TN 37040-0005
931-648-8826

Hardin County Library
1365 Pickwick St. S.
Savannah, TN 38372
731-925-4314

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

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

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

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

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

Substance of Proposed Rule

Paragraph (5) of rule 1200-1-7-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current paragraph in its entirety and substituting the following language:

- (5) Facility Inspection Fee – Any person who has a municipal solid waste disposal facility permit or incinerator permit that received waste on January 1, 2006, or thereafter, is assessed a facility inspection fee of \$0.35 on each ton of municipal solid waste received. This fee shall be calculated in the same manner and paid at the same time as the surcharge in rule 1200-1-7-.08.

Authority: T.C.A. §§ 68-203-103(a)(1), 68-203-103(b)(3), 68-211-107(a), and 68-211-111(d)(2).

RULEMAKING HEARINGS

For technical information concerning this notice of rulemaking contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, (615) 532-0874.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of August, 2005. (08-56)

RULEMAKING HEARINGS

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Nashville Public Library Auditorium, 1st Floor, 615 Church Street, Nashville, Tennessee 37219 at 9:30 a.m. C.D.T. on the 18th day of October 2005.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

Rule 1200-13-14-.14 TennCare Partners State-Only Program is deleted in its entirety.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2005. (08-65)

RULEMAKING HEARINGS

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

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Nashville Public Library Auditorium, 1st Floor, 615 Church Street, Nashville, Tennessee 37219 at 9:30 a.m. C.D.T. on the 18th day of October 2005.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

Substance of Proposed Rule

Rule 1200-13-13-.14 TennCare Partners State-Only Program is deleted in its entirety.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2005. (08-66)

RULEMAKING HEARINGS

**THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
DIVISION OF FAMILY ASSISTANCE**

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 2nd Floor BoardRoom, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CST on October 18, 2005.

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

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

**SUBSTANCE OF PROPOSED RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-2
FAMILY ASSISTANCE UNIT
FOOD STAMP PROGRAM**

AMENDMENTS

Rule 1240-1-2-.02 Household Concept – Food Stamps Only, is amended by deleting Part 5 under Subparagraph (a) Paragraph (1), and by substituting the following language, so that, as amended, Part 5 Paragraph (1), Subparagraph (a) shall read as follows:

5. An individual who is sixty (60) years of age or older (and the spouse of such individual) who lives with others and who is unable to purchase and prepare meals separately because he/she suffers from a disability considered permanent under the Social Security Act or some other non-disease-related severe permanent disability. In order for this individual and spouse to be eligible for separate household status, the combined gross income of all others with whom the individual resides (excluding the individual and his/her spouse's income) cannot exceed one hundred sixty five percent (165%) of the poverty level as shown in the Table below:

RULEMAKING HEARINGS

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
165% of Poverty	1316	1765	2213	2661	3109	3558	4006	4454	4903	5352

Add \$449 for each additional person

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105 and 71-5-304; 7 U.S.C.A. § 2014; and 7 C.F.R. §§ 273.1, 273.1(b)(2), 273.9, and 273.10.

**CHAPTER 1240-1-4
FINANCIAL ELIGIBILITY REQUIREMENTS**

AMENDMENTS

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table I under Paragraph (1) Sub-paragraph (a) Part 2 in its entirety, and by inserting a new Table I, so that, as amended, Table I shall read as follows:

Table I

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1037	1390	1744	2097	2450	2803	3156	3509	3863	4217

For each additional member add \$354

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table II under Paragraph (1) Sub-paragraph (b) Part 2 in its entirety, and by inserting a new Table II, so that, as amended, Table II shall read as follows:

Table II

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Maximum Net Income	798	1070	1341	1613	1885	2156	2428	2700	2972	3244

For each additional member add \$272

RULEMAKING HEARINGS

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table III under Paragraph (1) Sub-paragraph (c) Part 2 in its entirety, and by inserting a new Table III, so that, as amended, Table III shall read as follows:

Table III

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Maximum Coupon Allotment	152	278	399	506	601	722	798	912	1026	1140

For each additional member add \$114

Rule 1240-1-4-.27 Standard of Need/Income, is amended by deleting Table IV-A and Table IV-B under Paragraph (1) Subparagraph (d) in their entirety, and by inserting a new Table IV-A and Table IV-B, so that, as amended, Table IV-A and Table IV-B shall read as follows:

Table IV-A
Standard Deduction

Household Size	1	2	3	4	5	6+
Standard Deduction	134	134	134	134	157	179

Table IV-B
Food Stamp Deductions

Maximum Dependent Care for Child Less than 2 Years of Age	\$200
Maximum Dependent Care for Child Over Age 2 or Adult	\$175
Maximum Shelter Deduction for Non-Elderly/Disabled Households	\$400
Maximum Shelter Deduction for Elderly/ Disabled Households	No Maximum

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105 and 71-5-304; 7 U.S.C.A. § 2014; and 7 C.F.R. §§ 273.9 and 273.10.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of August, 2005. (08-48)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, to consider the promulgation of new rules and repeal of rules pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-204, 50-6-101 through 50-6-103, 50-6-118, 50-6-233, and 50-6-236 through 50-6-242. 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 Media Room on the Third Floor of the W.R. Snodgrass Tower, 312 8th Ave. North, Nashville, Tennessee 37243 at 9:00 a.m. CDT on the 21st day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Labor and Workforce Development, Division of Workers' Compensation, 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 the Department's ADA Coordinator, Mr. Jewel Crawford, at Andrew Johnson Tower, Eighth Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0655 and (615) 741-8805.

For a copy of the entire text of this notice of rulemaking hearing contact: Vickie Gregory, Administrative 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) 253-1613.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 0800-2-5
BENEFIT REVIEW PROCESS RULES**

NEW RULES

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0800-2-5-.01	Definitions
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0800-2-5-.05	Documents to be Provided upon Request of Workers' Compensation Specialist
0800-2-5-.06	Discovery
0800-2-5-.07	Benefit Review Conferences
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0800-2-5-.09	Exhaustion of the Benefit Review Conference Process
0800-2-5-.10	Penalties

0800-2-5-.01 DEFINITIONS. The following definitions are for the purposes of this chapter only:

- (1) "Act" means the Tennessee Workers' Compensation Act, T.C.A. § 50-6-101, et seq., as amended.
- (2) "Administrator" means the Administrator of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

RULEMAKING HEARINGS

- (3) "Benefit Review Conference" means a non-adversarial, informal dispute resolution proceeding to fully and finally resolve workers' compensation disputes as provided in the Act.
- (4) "Benefit Review Section" means the section of the Tennessee Department of Labor and Workforce Development, Workers' Compensation Division, which provides assistance regarding Workers' Compensation issues.
- (5) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.
- (6) "Court" means any court which has jurisdiction to hear a workers' compensation case under T.C.A., Title 50, Chapter 6.
- (7) "Designated Discovery Attorney" means an attorney currently licensed to practice law in Tennessee who is a Workers' Compensation Specialist employed by the Tennessee Department of Labor and Workforce Development designated by the Commissioner to act pursuant to T.C.A. § 50-6-236(i).
- (8) "Designee" means any person whom the Commissioner indicates, selects, appoints, nominates, or sets apart for a purpose or duty.
- (9) "Employee" shall have the same meaning as set forth in T.C.A. § 50-6-102.
- (10) "Employer" shall have the same meaning as set forth in T.C.A. § 50-6-102.
- (11) "Exhaustion of the Benefit Review Process" means the completion of the statutorily-mandated Benefit Review Process, as provided in Rule 0800-2-5-.10.
- (12) "Party" means any person or entity which either could be liable for payment of workers' compensation benefits or a person who has a potential right to receive workers' compensation benefits. "Party" shall include a legal representative of a party.
- (13) "Request for Assistance" means a request for a determination by a Workers' Compensation Specialist regarding temporary disability, medical benefits, causation, compensability and/or penalties.
- (14) "Request for Benefit Review Conference" means a request for mediation of all issues related to the final resolution of a claim.
- (15) "Responding party" means the party responding to a Request for Assistance or a Request for Benefit Review Conference filed with the Workers' Compensation Benefit Review Section.
- (16) "Wage Statement" means the form prescribed by the Division of Workers' Compensation which will include all gross wages paid to an employee for at least fifty-two (52) weeks preceding the date of injury.
- (17) "Workers' Compensation Specialist" or "Specialist" means a department employee who has the following authority, including but not limited to: a) provide information regarding workers' compensation for employees, employers and medical providers; b) issue Orders pursuant to statutory authority; c) conduct Benefit Review Conferences; d) review settlements for approval; e) and perform other duties to achieve the purposes of the Act.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-206, 50-6-233, 50-6-236 through 50-6-242.

RULEMAKING HEARINGS

0800-2-5-.02 REQUEST FOR ASSISTANCE OR MEDIATION.

- (1) Any party may contact the Workers' Compensation Division during regular business hours to obtain information about their rights and obligations under the Workers' Compensation Law.
- (2) Any party may file a Request for Assistance for investigation of issues involving temporary disability and/or medical treatment. This shall include resolution of issues of causation and/or compensability. An injured employee or his or her representative may also file a Request for Assistance requesting assessment of penalties for untimely payment of temporary disability benefits.
- (3) Any party may file a Request for Benefit Review Conference in order to negotiate final settlement of all workers' compensation issues.
- (4) Any party may file a Request for Settlement Approval in order to have a proposed settlement reviewed for purposes of approving the settlement and making it final and binding.
- (5) A Workers' Compensation Specialist shall provide all necessary forms and instructions and may offer assistance in completing and submitting such forms.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-233, 50-6-236 through 50-6-242, 4-5-202.

0800-2-5-.03 REQUIREMENTS FOR REQUEST FOR ASSISTANCE.

- (1) A Request for Assistance shall be filed on a form prescribed by the Commissioner.
- (2) A Request for Assistance shall be deemed to be filed on the date it is received in any office of the Benefit Review Program.
- (3) All Requests for Assistance filed by an employee or employee's legal representative shall be accompanied by a medical release signed by the employee.
- (4) A party filing a Request for Assistance shall provide a copy thereof to any opposing party.
- (5) Upon receipt of a Request for Assistance, a Workers' Compensation Specialist shall gather information, analyze issues and attempt to facilitate an agreed resolution of the dispute through mediation.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-233, 50-6-236 through 50-6-242.

0800-2-5-.04 REQUIREMENTS FOR REQUESTS FOR BENEFIT REVIEW CONFERENCE.

- (1) A Request for Benefit Review Conference shall be signed by the requesting party.
- (2) A Request for Benefit Review Conference shall be deemed filed for purposes of the Act on the date of receipt in any office of the Workers' Compensation Benefit Review Program.
- (3) A party filing a Request for Benefit Review Conference shall provide a copy thereof to any opposing party.
- (4) A Workers' Compensation Specialist shall receive process and evaluate all requests for a Benefit Review Conference filed with the Workers' Compensation Benefit Review Section.

RULEMAKING HEARINGS

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-233, 50-6-236 through 50-6-242.

0800-2-5-.05 DOCUMENTS TO BE PROVIDED UPON REQUEST OF WORKERS' COMPENSATION SPECIALIST.

- (1) Upon request by the Workers' Compensation Specialist, a party to a Request for Assistance or a Request for a Benefit Review Conference shall provide all documentation relevant to resolution of the dispute both to the Specialist and to all parties, including but not limited to the following:
 - (a) Medical Records, including impairment ratings given;
 - (b) Medical Bills;
 - (c) Employer's First Report of Injury;
 - (d) Wage Statement;
 - (e) Employment Application and/or Personnel records, including work status;
 - (f) Statutory basis for denial and documentation supporting such;
 - (g) Job Description/Analysis of employee's job prior to injury;
 - (h) Education level of the employee;
 - (i) Employment history of the employee;
 - (j) Issues in dispute;
 - (k) Prior medical records of employee, including psychiatric records if relevant to the merits of the claim;
 - (l) List of all the employee's prior workers' compensation claims;
 - (m) List of any prior litigation the employee has been involved in;
 - (n) List of any prior criminal convictions which would be admissible pursuant to the Tennessee Rules of Evidence.
- (2) Any party has an ongoing obligation to supplement and/or correct any documentation or information otherwise required by the Specialist to be produced.
- (3) Any unexcused failure to produce these documents as determined by the Administrator or Workers' Compensation Specialist will be subject to the penalty provisions contained in the workers' compensation law and/or these rules.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-233, 50-6-236 through 50-6-242.

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0800-2-5-.06 DISCOVERY.

(1) Purpose and Scope.

The Division's Benefit Review process is designed to provide an informal, expeditious resolution to disputes between injured workers and employers. Parties involved in a workers' compensation case are strongly encouraged, where practicable, to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, a Workers' Compensation Specialist may request the assistance of the Designated Discovery Attorney.

(2) Methods of Discovery

(a) For the purpose of conducting discovery as part of a Request for Assistance, the parties shall provide any documentation requested by a Workers' Compensation Specialist. The Workers' Compensation Specialist shall share all information provided with any party without privilege or confidentiality.

(b) For the purpose of conducting discovery as part of a Benefit Review Conference, the parties shall complete a standard discovery form prescribed by the Commissioner. Completed copies shall be provided to each party and to the Workers' Compensation Specialist assigned to the case. In keeping with the principles of mediation, information and/or documentation presented and discussed during a Benefit Review Conference need not be shared with all parties.

(3) Referral to Designated Discovery Attorney

(a) Workers' Compensation Specialists may, at the request of either party, or in the Specialist's own discretion, refer a matter to the Designated Discovery Attorney within the Department.

(b) If any of the items listed in these rules are not furnished as requested, the Workers' Compensation Specialist may request a subpoena for those items from the Designated Discovery Attorney. The Designated Discovery Attorney shall have the authority to issue a subpoena for such items.

(c) The Designated Discovery Attorney may, in his/her discretion, authorize the use of any method of discovery provided for in the Act.

(d) The Designated Discovery Attorney shall decide any motion relating to discovery under these Rules. Decisions on such discovery requests shall be final and not subject to appeal for purposes of the Benefit Review process.

(4) Any party has an ongoing obligation to supplement and/or correct any documentation or information otherwise required to be produced.

(5) Sanctions for Failure to Comply with Orders and Subpoenas. Failure to comply with any lawful order or subpoena of the Designated Discovery Attorney may be deemed failure to comply with a Specialist's Order and thereby may be cause for issuance of any or all civil penalties pursuant to T.C.A. § 50-6-238(d). Additionally, the Designated Discovery Attorney may apply to the appropriate Circuit or Chancery court for an order to compel in the same manner as set forth in T.C.A. § 4-5-311, which may result in contempt sanctions.

RULEMAKING HEARINGS

Authority: T.C.A. §§ 50-6-203, 50-6-236, 50-6-238, 4-5-311.

0800-2-5-.07 BENEFIT REVIEW CONFERENCES.

- (1) A Request for Benefit Review Conference must be filed within the statute of limitations provided by T.C.A. § 50-6-203.
- (2) Assignment for a Benefit Review Conference:

The Request for Benefit Review Conference shall be assigned to the Benefit Review office designated for the county where the employee lives.
- (3) Scheduling of Benefit Review Conference:
 - (a) A Benefit Review Conference shall not be scheduled until Maximum Medical Improvement is reached, except upon request by a party and determination by the Director that extraordinary circumstances require otherwise.
 - (b) Scheduling of a Benefit Review Conference shall be within the time limitations provided by statute.
 - (c) All parties are required to cooperate in the scheduling of a Benefit Review Conference pursuant to T.C.A. § 50-6-239.
- (4) Notice and Response of Benefit Review Conference:
 - (a) Upon scheduling of a Benefit Review Conference, notice of date, time, and location shall be sent to all parties.
 - (b) Accompanying the notice of the Benefit Review Conference, the parties shall receive a standard discovery form showing all required information and documentation which shall be exchanged between the parties and the requirements for submitting such documentation.
 - (c) In cases involving a claim against the Second Injury Fund, the Fund shall receive notice of any Benefit Review Conference, with the opportunity to participate.
- (5) Continuances
 - (a) Prior to Benefit Review Conference: A request for a continuance prior to a Benefit Review Conference may be granted upon a finding, in the sole discretion of the Specialist, that extraordinary circumstances require such continuance.
 - (b) After convening a Benefit Review Conference, a Workers' Compensation Specialist has the sole discretion to continue the conference.
- (6) Conduct of the Benefit Review Conference
 - (a) The conduct of the Benefit Review Conference shall be in the control of the Workers' Compensation Specialist.

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- (b) Either party may be represented by an attorney, but legal representation is not required at a Benefit Review Conference.
 - (c) Only in a situation where a collective bargaining relationship or a memorandum of understanding exists between an employer and a collective bargaining agent may a representative of that collective bargaining agent appear with and assist an employee at the Benefit Review Conference. No provision of this chapter shall authorize a representative of a collective bargaining agent to engage in the “practice of law” or “law business”, prohibited by Tenn. Code Ann. § 23-3-103, or Rules of the Tennessee Supreme Court, Rule 7, § 1.01, as a part of the informal mediation procedure set forth in this chapter unless the representative is an attorney licensed to practice law in the State of Tennessee.
- (7) Preparation and submission of Documentation
- (a) If a mediated settlement occurs, the Workers’ Compensation Specialist shall prepare a mediated settlement agreement to be signed by the parties and by the Specialist at the time of the conference. The signed mediated settlement agreement shall be filed by the Specialist with the Commissioner. The Workers’ Compensation Specialist is not required to prepare a mediated settlement agreement in cases involving the Second Injury Fund.
 - (b) If there is no settlement, the Specialist may declare an impasse. Upon declaring impasse, the Specialist shall prepare a written report pursuant to T.C.A. §50-6-240 to be provided to the parties and filed with the Commissioner.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-236 through 50-6-239.

0800-2-5-.08 APPROVAL OF SETTLEMENT BY THE COMMISSIONER OR THE COMMISSIONER’S DESIGNEE.

- (1) No settlement is effective unless and until it is approved by the Commissioner or the Commissioner’s designee, or a court of competent jurisdiction in accordance with T.C.A. §50-6-206.
- (2) Proposed settlements shall be submitted on a form prescribed by the Commissioner. The employee shall be interviewed by a Workers’ Compensation Specialist prior to a proposed settlement.

Authority: T.C.A. §§ 50-6-110, 50-6-208, 50-6-233, 50-6-236 through 50-6-243, 50-6-505.

0800-2-5-.09 EXHAUSTION OF THE BENEFIT REVIEW CONFERENCE PROCESS.

- (1) The Benefit Review Conference Process shall be deemed exhausted only upon occurrence of any of the following:
 - (a) The issuance of an Order of Denial based on compensability of the claim by a Workers’ Compensation Specialist;
 - (b) Reaching of a mediated settlement, as evidence by a signed document executed by the proper parties, including the Workers’ Compensation Specialist;
 - (c) Issuance of an impasse report signed by the Workers’ Compensation Specialist;

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- (d) Issuance of a waiver signed by the Director of the Benefit Program or the Director's designee;
- (2) If the parties have mutually agreed to a settlement without a Benefit Review Conference, the parties shall not be required to exhaust the Benefit Review Conference Process before submitting the settlement to an appropriate Court or to the Workers' Compensation Specialist for approval. If the settlement is not approved, the parties shall then be required to exhaust the Benefit Review Conference Process.
- (3) The Benefit Review Conference Process shall not be deemed exhausted upon the occurrence of the following:
 - (a) The filing of a Request for Assistance or a determination thereof on grounds other than non-compensability pursuant to T.C.A. §§ 50-6-236 or 50-6-238;
 - (b) Any penalty Orders pursuant to T.C.A. Title 50, Chapter 6;
 - (c) Voluntary withdrawal of a Request for Benefit Review Conference or claim;
 - (d) Involuntary dismissal pursuant to T.C.A. § 50-6-203(f).

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-118, 50-6-203, 50-6-233, 50-6-236 through 50-6-242.

0800-2-5-.10 PENALTIES.

- (1) Any party or Specialist may bring to the Administrator's attention any violation of the workers' compensation law and/or these Rules for which civil penalties may be assessed in an amount not less than fifty dollars (\$50.00), nor more than ten thousand dollars (\$10,000.00), at the discretion of the Administrator or the Administrator's designee, depending on the severity of the violation.
- (2) In addition to any other penalties provided by Rule and/or law, parties to a Request for a Benefit Review Conference who fail to attend a properly scheduled and noticed benefit review conference may be assessed a penalty of not less than fifty dollars (\$50.00), nor more than five thousand dollars (\$5,000.00), at the discretion of the Administrator or the Administrator's designee.
- (3) Any penalties assessed by the Department pursuant to these rules shall follow the procedures set out in the Penalty Program Rules 0800-2-13-.01 et seq. and/or the workers' compensation law.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-118, 50-6-233, 50-6-236 through 50-6-242, 4-5-202.

REPEAL

Rules 0800-2-5-.01 through 0800-2-5-.08 are hereby repealed in their entirety.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-233, 50-6-236 through 50-6-242.

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd day of August, 2005. (08-50)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, to consider the promulgation of amendments to rules pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-204, 50-6-118, 50-6-233 and 50-6-412. 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 Media Room on the Third Floor of the W.R. Snodgrass Tower, 312 8th Ave. North, Nashville, Tennessee 37243 at 9:00 a.m. CDT on the 28th day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Labor and Workforce Development, Division of Workers' Compensation, 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 the Department's ADA Coordinator, Mr. Jewel Crawford, at Andrew Johnson Tower, 8th Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0655 and (615) 741-8805.

For a copy of the entire text of this notice of rulemaking hearing contact: Erol Eryasa, 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, (615) 253-1606.

SUBSTANCE OF PROPOSED AMENDMENTS

CHAPTER 0800-2-13 PENALTY PROGRAM

AMENDMENTS

Part 2. of subparagraph (b) of paragraph (4) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits is amended by adding a semicolon (";") and the word "or" after the word "employee" so that as amended the subparagraph shall read:

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; or

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Subparagraph (b) of paragraph (4) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits is amended by creating a new Part 3. "the insurer has acted diligently, as determined by the Commissioner or Commissioner's Designee, to obtain necessary information to process the claim and has not been able to obtain it," so that as amended the subparagraph shall read:

3. the insurer has acted diligently, as determined by the Commissioner or Commissioner's Designee, to obtain necessary information to process the claim and has not been able to obtain it.

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Paragraph (5) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits is amended by adding the phrase "A benefit is paid on the date the employer or insurer places the benefits

RULEMAKING HEARINGS

into the mail for delivery to the injured employee.” after the word “paid” and the punctuation period “.” before the word “After” so that as amended the subparagraph shall read:

- (5) In deciding whether a benefit is unpaid or untimely paid, compensation shall be deemed promptly paid if the first payment is made 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. A benefit is paid on the date the employer or insurer places the benefits into the mail for delivery to the injured employee. 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, 50-6-233 and 50-6-412.

Part 2. of subparagraph (a) of paragraph (1) of rule 0800-2-13-.03 Departmental Actions is amended by adding a semicolon (“;”) and the word “or” after the word “Law” so that as amended the subparagraph shall read:

- (2) the employer or insurer does not owe any workers’ compensation benefits under the Workers’ Compensation Law; or

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Subparagraph (a) of paragraph (1) of rule 0800-2-13-.03 Departmental Actions is amended by creating a new Part 3. “in the sole discretion of the Commissioner or the Commissioner’s Designee, the Commissioner or Commissioner’s Designee finds that the insurer has acted diligently to obtain necessary information to process the claim and has not been able to obtain it,” so that as amended the subparagraph shall read:

- (3) in the sole discretion of the Commissioner or the Commissioner’s Designee, the Commissioner or Commissioner’s Designee finds that the insurer has acted diligently to obtain necessary information to process the claim and has not been able to obtain it.

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Paragraph (3) of rule 0800-2-13-.03 Departmental Actions is amended by adding a comma (“,”) and the phrase “or the Commissioner’s Designee” and a second comma (“,”) after the word “Commissioner” and before the word “shall” so that as amended the paragraph shall read:

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

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Rule 0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers’ Compensation Benefits is amended by inserting a new paragraph (1) and by renumbering the existing paragraphs so that as amended the rule shall read:

- (1) An employer or insurer assessed a civil penalty for unpaid or untimely paid worker’s compensation benefits has the right to file, in writing, a petition for informal reconsideration by the Commissioner or Commissioner’s Designee, other than the specialist who issued the Agency Decision,

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to determine if the civil penalty should have been assessed. However, the filing of the petition shall not be a prerequisite for requesting a contested case hearing, and the fifteen calendar day period for a party to request a contested case hearing shall not be tolled by the filing of a petition for informal reconsideration. The petition for informal reconsideration shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid workers' compensation benefits and shall be filed with the Designee who issued the Agency Decision assessing the civil penalty within seven (7) calendar days of the date upon which the Agency Decision was issued.

- (2) 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.
- (3) 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 workers' compensation benefits.
- (4) Any request for a hearing shall be filed with the Designee who issued the Agency Decision assessing the 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.
- (5) The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have 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.
- (6) Upon receipt of a timely request for a hearing, the Commissioner shall issue a Notice of Hearing to the employer or insurer.

Authority: T.C.A. §§ 50-6-118, 50-6-233(c) and 50-6-412.

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd day of August, 2005. (08-51)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, to consider the promulgation of amendments to rules pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-204, 50-6-235. 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 Media Room on the Third Floor of the W.R. Snodgrass Tower, 312 8th Ave. North, Nashville, Tennessee 37243 at 9:00 a.m. CDST on the 31st day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Labor and Workforce Development, Division of Workers' Compensation, 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 the Department's ADA Coordinator, Mr. Jewel Crawford, at Andrew Johnson Tower, 8th Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0655 and (615) 741-8805.

For a copy of the entire text of this notice of rulemaking hearing contact: Shara Hamlett, TN Dept. of Labor and Workforce Dev., Division of Workers' Compensation, Uninsured Employers Fund, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, Telephone: (615) 253-6261.

SUBSTANCE OF PROPOSED AMENDMENTS

CHAPTER 0800-2-16 DEPOSITION FEES

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0800-2-16-.01 Deposition Fees

Rule 0800-2-16-.01 Deposition Fees shall be amended by deleting paragraphs (1) and (2) in their entirety and substituting the following language so that, as amended, the rule shall read:

- (1) Licensed physicians may charge their usual and customary fee for providing testimony by deposition to be used in a workers' compensation claim, provided that such fee does not exceed seven hundred fifty dollars (\$750) for the first hour's time.
- (2) Depositions requiring over one (1) hour in duration shall be pro-rated at the licensed physician's usual and customary fee as set forth above, not to exceed four hundred fifty dollars (\$450) per hour for deposition time in excess of one (1) hour. Physicians shall not charge for the first quarter hour of preparation time. In instances requiring over one quarter hour of preparation time, a physician's preparation time in excess of one quarter hour shall be added to and included in the deposition time and billed at the same rates as for the deposition.

Authority: T.C.A. § 50-6-235(d).

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd day of August, 2005. (08-52)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, to consider the promulgation of new rules pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-204, 50-6-204, and Public Chapter 962, § 24 (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 Media Room on the Third Floor of the W.R. Snodgrass Tower, 312 8th Ave. North, Nashville, Tennessee 37243 at 1:00 p.m. CDT on the 25th day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Labor and Workforce Development, Division of Workers' Compensation, 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 the Department's ADA Coordinator, Mr. Jewel Crawford, at Andrew Johnson Tower, 8th Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0655 and (615) 741-8805.

For a copy of the entire text of this notice of rulemaking hearing contact: Vickie Gregory, Administrative 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) 253-1613.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0800-2-20 MEDICAL IMPAIRMENT RATING REGISTRY RULES

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0800-2-20-.16	Claimant Cooperation.
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0800-2-20-.01 DEFINITIONS. The following definitions are for the purposes of this chapter only:

- (1) “Act” means the Tennessee Workers’ Compensation Act, T.C.A. 50-6-101 et seq., as amended.
- (2) “Administrator” means the chief administrative officer of the Workers’ Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (3) “Commissioner” means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner’s designee.
- (4) “Department” means the Tennessee Department of Labor and Workforce Development.
- (5) “Division” means the Workers’ Compensation Division of the Tennessee Department of Labor and Workforce Development.
- (6) “Medical Director” means the Division’s Medical Director, appointed by the Commissioner pursuant to T.C.A. § 50-6-126 (Repl. 1999).
- (7) “Medical Impairment Rating Registry” or “MIR Registry” means the registry or listing of physicians established by the Commissioner pursuant to Public Chapter 962, § 24 (2004) to perform independent medical impairment ratings when a dispute arises about the degree of medical impairment.
- (8) “Program Coordinator” means the chief administrative officer of the MIR Registry Program, appointed by the Administrator, or the Program Coordinator’s Designee.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.02 PURPOSE AND SCOPE.

- (1) Purpose. The purpose of the Medical Impairment Rating Registry Program is to establish a resource to resolve conflicting opinions regarding permanent impairment ratings given for on-the-job injuries. In order to ensure high-quality independent medical impairment evaluations, the Department establishes these Rules for parties and physicians participating under the Act’s independent medical examiner evaluation process. MIR Registry physicians shall agree to provide evaluations in a manner consistent with the standard of care in their community and in compliance with these Rules, as well as to issue opinions based upon the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment or other appropriate method pursuant to the Act. These Rules are effective July 1, 2005 and are established pursuant Public Chapter 962, § 24 (2004).
- (2) Scope. The MIR Registry is available to any party who disputes an impairment rating of a physician in a Workers’ Compensation claim for injuries that occur on or after July 1, 2005. Other potential issues such as causation, apportionment, appropriateness of treatment, work restrictions, and job modifications shall not be considered or addressed under this MIR Registry Program. Requests for evaluations shall be submitted by paper or electronic application to the Program Coordinator pursuant to the Rules.

Authority: Public Chapter 962, § 24 (2004).

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0800-2-20-.03 SEVERABILITY AND PREEMPTION.

- (1) If any provision of these Rules or the application thereof to any person or circumstance is, for any reason held to be invalid, the remainder of the Rules and the application of the provisions to other persons or circumstances shall not be affected in any respect whatsoever. Whenever a conflict arises between these Rules and any other rule or regulation, these Rules shall prevail.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20.04 REQUISITE PHYSICIAN QUALIFICATIONS FOR INCLUSION ON MEDICAL IMPAIRMENT RATING REGISTRY.

- (1) A physician seeking appointment to the MIR Registry shall make application and must satisfy the following qualifications:
 - (a) Possess a license to practice medicine or osteopathy in Tennessee which is current, active, and unrestricted;
 - (b) Be board-certified in his/her medical specialty by a board recognized by the American Board of Medical Specialties, the American Osteopathic Association or another organization acceptable to the Program Coordinator;
 - (c) Have successfully completed a training course, accepted by the Program Coordinator, dedicated to the proper application of the applicable edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (hereafter the "AMA Guides") in impairment evaluations and furnish satisfactory evidence thereof; and
 - (d) Have at least the minimum medical malpractice insurance coverage required by the Program Coordinator and furnish satisfactory proof thereof.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.05 APPLICATION PROCEDURES FOR PHYSICIANS TO JOIN THE REGISTRY.

- (1) Appointment to the MIR Registry shall be for a two (2) year term, except as otherwise set forth in these Rules. Physicians may seek renewal appointments by the same process as the initial application described herein. The Division reserves the right to charge physicians a non-refundable application fee upon appointment, renewal, or reinstatement to the MIR Registry. The Commissioner or the Commissioner's designee, upon the advice of the Medical Director shall have the sole and exclusive authority to approve or reject applications for inclusion in the MIR Registry.
- (2) Physicians seeking appointment to the MIR Registry shall complete an "Application for Appointment to the MIR Registry," available upon request from the Program Coordinator or on-line at www.state.tn.us/labor-wfd/mainforms.html, certify to and, upon approval of the application, comply with the following conditions:
 - (a) Unless otherwise approved by the Program Coordinator, conduct all MIR evaluations based on the guidelines in the applicable edition of the AMA Guides and submit the original "MIR Impairment Rating Report" with all attachments to the Program Coordinator. In cases not covered by the applicable AMA Guides, any impairment rating allowed under the Act shall be appropriate;

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- (b) Decline the Program Coordinator's request to conduct an evaluation only on the basis of good cause shown, as determined by the Program Coordinator. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations;
- (c) Comply with the MIR Registry's Rules;
- (d) While on the MIR Registry, agree to maintain an active and unrestricted license to practice medicine or osteopathy in Tennessee and to immediately notify the Program Coordinator of any change in the status of the license, including any restrictions placed upon the license;
- (e) While on the MIR Registry, agree to maintain all board certifications listed on the application and to immediately notify the Program Coordinator of any change in their status;
- (f) Conduct MIR evaluations in an objective and impartial manner, and shall:
 - 1. Conduct these evaluations only in a professional medical office suitable for medical or psychiatric evaluations where the primary use of the site is for medical services; not residential, commercial, educational, legal, or retail in nature. Exceptions will be made only on the basis of good cause shown, as determined by the Program Coordinator.
 - 2. Comply with all local, state and federal laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.
 - 3. Not conduct a physical examination on a claimant of the opposite sex without a witness of the same sex as the claimant present.
- (g) Not refer any MIR Registry claimant to another physician for any treatment or testing nor suggest referral or treatment;
- (h) Not become the treating physician for the claimant regarding the work-related injury;
- (i) Not evaluate an MIR Registry claimant without prior consent of the Program Coordinator if a conflict of interest exists. A conflict of interest includes, but is not limited to, instances where the physician has treated or evaluated the claimant for the subject injury or has appeared on a panel of doctors made available to the claimant at the time of injury or subsequent to the injury in the course of medical treatment. If an employer provides a claimant with the name of a group of physicians rather than individual physician names, the entire group of physicians shall be considered to have a conflict of interest for purposes of the MIR Registry Program;
- (j) Not employ invasive diagnostic procedures, except venipuncture for obtaining a blood sample, without prior approval of the Program Coordinator;
- (k) Not substitute, or allow to be substituted, anyone else, including any other physician, physician assistant, nurse practitioner, physical therapist or staff member, as the physician to conduct the evaluation without prior written permission from the Program Coordinator;
- (l) No later than thirty (30) calendar days after the cancellation of an evaluation, refund to the paying party part or all of the fee paid by that party, as may be required by the Rules, the Commissioner or the Commissioner's designee; and

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- (m) For each MIR Registry case assigned, address only the issue of permanent impairment rating and make appropriate findings.
- (3) Physicians denied appointment to the MIR Registry on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner or the Commissioner's designee may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner or the Commissioner's designee shall issue a Notice of Final Determination which shall be the final decision.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.06 REQUESTS FOR A MIR REGISTRY THREE-PHYSICIAN LIST.

- (1) Prior to Division participation, the parties may attempt to negotiate selection of any physician to conduct a medical impairment rating evaluation. Physicians whose names appear on the MIR Registry but are selected in a manner other than through the Division pursuant to these Rules shall have no greater legal presumption of correctness given to their opinion than any other provider's impairment rating when the physician was not selected pursuant to these procedures.
- (2) Application process: If there is no agreed upon selection of a physician, or if an agreement that was reached fails, either party may request the Division participate in selecting the three-physician list. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to the Division's procedures in these Rules shall be presumed to be the accurate impairment rating. However, this presumption may be rebutted by clear and convincing evidence to the contrary.
- (3) Form Required: The "Application for a Medical Impairment Rating" available upon request from the Program Coordinator or online at www.state.tn.us/labor-wfd/mainforms.html, or a materially substantial equivalent duplication approved by the Program Coordinator, shall be used in all cases to request an MIR three-physician listing. The Commissioner requires the request designate:
 - (a) All body part(s) or medical condition(s) to be evaluated, including whether mental impairment shall be evaluated;
 - (b) The names of all physicians that have previously evaluated, treated, or are currently evaluating or treating the claimant for the work-related injury at employer and/or employee expense;
 - (c) The names of all physicians made available to the claimant at the time of the injury (Form C-42). If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form;
 - (d) The state file number assigned to the claims.
- (4) The submitting party shall certify that all parties, as well as the Program Coordinator, have been sent the completed application form at the same time. The application will not be processed by the Program Coordinator until all required information has been provided.
- (5) Generating the three-physician listing.

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- (a) Within five (5) business days of receipt of the completed "Application for a Medical Impairment Rating," the Program Coordinator will produce a listing of three qualified physicians drawn from the Division's MIR Registry, from which one physician shall be designated to perform the evaluation. The three-physician listing created will be comprised of physicians qualified, based on the information provided by the physician and on their accreditation by the Program Coordinator, to perform evaluations of the body part(s) and/or medical condition(s) designated on the application for an evaluation, excluding those who have a conflict of interest as described in the Rules. Psychiatric or psychological evaluations regarding mental and/or behavioral impairment shall be performed by a psychiatrist.
 - (b) If an evaluation is requested for a particular area of expertise not represented in the MIR Registry, the Program Coordinator shall provide a three-physician listing upon the recommendation of the Medical Director. The Program Coordinator will verify qualifications prior to assigning a listing of Temporary MIR physicians. Approval to serve as a Temporary MIR physician shall be limited to the specific case for which services are requested.
 - (c) To guarantee randomness, all three-physician listings shall be derived from the computer-generated pool of qualified physicians. The pool of physician names will be kept confidential. The Program Coordinator will notify the parties in writing only the names and the medical specialties of the physicians on the listing.
- (6) MIR Registry physician selection process.
- (a) Within three (3) business days of the issuance of the three-physician listing by the Program Coordinator, the employer shall strike one name and inform the other party and the Program Coordinator of that name. Within three (3) business days of the date of receipt of that name from the employer, the claimant shall strike one of the two remaining names and inform the Program Coordinator and the employer of the name of the remaining physician, who will perform the evaluation.
 - (b) If the Program Coordinator is not notified of the selected physician within ten (10) calendar days of the date the Program Coordinator issued the three-physician listing, the Program Coordinator may randomly select one name from the three-physician listing to perform the evaluation. If one party fails to timely strike a name from the listing, the other party shall notify the Program Coordinator, within these ten (10) calendar days, and at the same time provide to the Program Coordinator the name that it wishes to strike. In that situation, the Program Coordinator will randomly select one physician from the remaining two, and that physician shall perform the evaluation. The Program Coordinator shall inform the parties of the name of the selected physician in writing.
 - (c) If a selected physician is unable to perform the evaluation, the Program Coordinator shall provide one replacement name to the original listing using the same criteria and process set forth above, and present that revised listing to the parties and each shall again strike one name according to the above procedures. Additionally, if a physician is removed from the three-physician listing for any reason other than having been struck by one of the parties, the Program Coordinator will issue one replacement physician name.
- (7) Appointment date.
- (a) Within three (3) business days of providing or receiving notice of the physician selection, the Program Coordinator shall call the MIR Registry physician to schedule the evaluation, and shall immediately notify both parties, and the Workers' Compensation Specialist if

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currently assigned, of the date and time of the evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

- (8) Submission of Medical Records.
- (a) The employer's representative shall concurrently provide to the MIR registry physician and the claimant a complete copy of all pertinent medical records pertaining to the subject injury, postmarked or hand-delivered at least ten (10) calendar days prior to the evaluation or as otherwise arranged by the Program Coordinator with the MIR physician. If deemed necessary by the Program Coordinator, the claimant shall promptly sign a "MIR Waiver and Consent" permitting the release of information to the MIR physician. The form shall include the release of all existing medical reports relevant to the subject injury including all previous impairment rating reports, the actual images of all pertinent imaging studies, the reports of all imaging studies and diagnostic tests, all hospital admission "history and physical examination" documents, all hospital discharge summaries, and all operation reports.
 - (b) The employer's representative shall be responsible for promptly sending a copy of the consent form to all treating and evaluating physicians or other healthcare providers, diagnostic centers, and hospitals involved in the care of the claimant requiring the form to ensure that this information will be forwarded to the MIR physician prior to the date of the scheduled evaluation. If the employer's representative fails to adhere to these time limits, the claimant may submit all medical records he/she has in his/her possession no later than five (5) calendar days prior to the evaluation or as otherwise arranged by the Program Coordinator with the MIR registry physician.
 - (c) In cases involving untimely medical record submission by either party, the Program Coordinator at his/her sole discretion, may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Impairment Rating Report" utilizing the information properly made available to the physician.
- (9) Form/Content of Medical Records Package.
- (a) The medical file shall include a dated cover sheet listing the claimant's name, MIR Registry physician's name, MIR Registry case number, date and time of the appointment, and the state file number. The medical file shall be in chronological order, by provider, and tabbed by year. It shall include a written summary by the treating physician with the range of dates of treatment. Medical records not meeting these requirements shall be resubmitted in the correct format within three (3) calendar days of notification by the Program Coordinator.
 - (b) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, non-treating case manager records or commentaries to the MIR Registry physician shall not be submitted without prior permission of the Program Coordinator. Medical depositions may be submitted as part of the medical records package only by written agreement of the parties.
- (10) Supplemental medical records shall be prepared in the same manner described above, and shall be mailed or hand-delivered by any party concurrently to the MIR Registry physician and the other party no later than five (5) calendar days prior to the date of the evaluation, or as otherwise arranged by the Program Coordinator.

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- (11) Claimants can bring an adult friend or family member to the evaluation to provide comfort and reassurance. However, the accompanying person cannot be the claimant’s attorney, paralegal, or other legal representative or any other personnel employed by the claimant’s attorney or legal representative. The guest may be asked to leave the evaluation at the discretion of the MIR Registry physician. Any forms that the MIR physician requests to be completed should be completed by the claimant only. If the claimant needs assistance in completing these forms for any reason, the claimant should notify the MIR Registry physician prior to the evaluation so that assistance can be provided by the MIR Registry physician’s staff.
- (12) The claimant shall notify the Program Coordinator of the necessity for a language interpreter concurrently with his/her notification of the chosen physician’s name. The employer shall be responsible for arranging for the services of and paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or to the MIR Registry physician.
- (13) When a claimant is required to travel outside a radius of fifteen (15) miles from the claimant’s residence or workplace, then such claimant shall be reimbursed by the employer for reasonable travel expenses as defined in the Act.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.07 PAYMENTS/FEES.

- (1) A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, as outlined below:
 - (a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of scheduling the appointment \$1,000.00
 - (b) Completed reports received and accepted by the Program Coordinator between thirty-one (31) and forty-five (45) calendar days of the scheduling the appointment \$850.00
 - (c) Completed reports received and accepted by the Program Coordinator between forty-six (46) and sixty (60) calendar days of the scheduling of the appointment \$500.00
 - (d) Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of scheduling the appointment No fee paid
- (2) The evaluation fee includes normal record review, the evaluation, and production of a standard “MIR Impairment Rating Report.” If the record review is unusually extensive and requires substantially longer than an hour for review, the physician may contact the Program Coordinator to request additional payment. This request should be made no later than three (3) calendar days prior to the scheduled date of the evaluation. The Program Coordinator, in consultation with the Medical Director, will determine if additional time and fees are appropriate. If denied, the MIR registry physician shall complete the evaluation to the best of his/her ability. If additional evaluation charges are approved, the Program Coordinator shall notify the employer of the approved review charges. The physician shall bill for the additional time at the pro-rata rate of \$500.00 per hour. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. The MIR Registry physician shall notify the Program Coordinator prior to

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performing any essential test that is non-routine or requires special facilities or equipment, and such test was not previously performed, or was previously performed but the findings are not usable at the time of the evaluation. The Program Coordinator, upon the advice of the Medical Director, will determine whether the test will be approved. If approved, the employer shall be responsible for paying for the essential test.

- (3) Late fees and penalties. Failure of the employer to timely submit the evaluation fee, as determined by the Program Coordinator, shall allow the physician to charge the employer an additional \$100.00 late fee for the evaluation. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid. At the request of a MIR Registry physician, the Division may assist the MIR Registry physician in collecting monies due under this Rule.
- (4) Cancellations. To be considered timely, notice of a party's desire to cancel an evaluation appointment shall be given to the Program Coordinator at least three (3) business days prior to the date of the evaluation. An evaluation may be canceled or rescheduled only after obtaining the consent of the Program Coordinator. The Program Coordinator shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel.
 - (a) If the request to cancel is not timely, the MIR registry physician shall be entitled to collect/retain a \$300.00 cancellation penalty fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee (for the rescheduled evaluation) in addition to this fee. The employer may be entitled to offset the cancellation fee(s) against any future settlement if the claimant cancels untimely or without good cause as determined by the Program Coordinator.
 1. If the claimant fails to appear for the evaluation with good cause as determined by the Program Coordinator the employer will not be entitled to offset the cancellation penalty fee against any future settlement.
 2. If the claimant fails to appear for the evaluation without good cause as determined by the Program Coordinator, the MIR Registry physician will perform a "paper only" evaluation by reviewing the existing medical record file and shall establish an impairment rating based upon the physician's opinion of the evidence presented. The physician shall be entitled to the entire fee.
 - (b) If the request to cancel is timely and the evaluation is not rescheduled, the MIR Registry physician shall be entitled to collect and/or retain a \$250.00 cancellation penalty fee.
 - (c) If the request to cancel is timely and the evaluation is rescheduled, the MIR Registry physician shall be entitled to collect and/or retain a \$150.00 cancellation penalty fee in addition to the rescheduled MIR fee.

Authority: *Public Chapter 962, § 24 (2004).*

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0800-2-20-.08 MULTIPLE IMPAIRMENT RATING EVALUATIONS.

- (1) In instances of more than one impairment rating being disputed in more than one medical specialty, and there is an insufficient number of physicians on the Registry who are qualified to perform all aspects of the evaluation, separate evaluations may be required, each being separate application and physician-selection processes and fees.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.09 COMMUNICATION WITH REGISTRY PHYSICIANS.

- (1) Prior to the creation of the three-physician listing, MIR Registry physicians who have rendered an opinion as to the impairment relating to the subject injury to a party to the case or a party's representative prior to the creation of a three-physician listing must disclose the nature and extent of those discussions to the Program Coordinator immediately upon their selection or appointment as the MIR registry physician. The Program Coordinator, in his or her sole authority, will determine whether or not a conflict of interest exists. Failure to disclose a potential conflict of interest may result in a physician's removal from the MIR Registry. While removed from the Registry, physicians shall not be eligible to perform MIR evaluations.
- (2) During the MIR physician selection process, registry physicians cannot render opinions as to the impairment relating to the subject injury to a party to the case or a party's representative in cases in which the physician's name appears on the three-physician listing. If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the evaluation, unless allowed by the Rules or approved by the Program Coordinator. Any approved communication, other than arranging for payment and the submission of medical records and the evaluation itself, shall be in writing with copies to all parties including the Program Coordinator. Failure by a Registry physician to disclose such communications will subject the physician to penalties under the Rules.
- (3) A party who seeks the presence of the MIR physician as a witness at a proceeding for any purpose, by subpoena, deposition or otherwise, shall be responsible for payment for those services to the MIR physician. Deposition fees shall be in accordance with applicable state rules and laws.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.10 REQUIREMENTS FOR THE EVALUATION.

- (1) The MIR Registry physician's responsibilities prior to the evaluation are to:
 - (a) Review all materials provided by the parties subject to these Rules; and,
 - (b) Review the purpose of the evaluation and the impairment questions to be answered in the evaluation report.
- (2) The MIR Registry physician's responsibilities following the evaluation are to:
 - (a) Consider all medical evidence obtained in the evaluation and provided by the parties subject to the Rules;
 - (b) Complete an "MIR Impairment Rating Report";

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- (c) Notify the Program Coordinator when the report has been completed;
 - (d) Send that complete report with all required attachments to the Program Coordinator only, via overnight delivery. The Program Coordinator will acknowledge, to the physician, receipt of the report.
- (3) No physician-patient relationship is created between the MIR physician and the claimant through the MIR Registry evaluation. The sole purpose of the evaluation is to establish an impairment rating and not to recommend future treatment or to provide a diagnosis or other medical advice.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.11 REQUIREMENTS FOR THE “MIR IMPAIRMENT RATING REPORT.”

- (1) After conducting the evaluation, the MIR physician shall produce the “MIR Impairment Rating Report”. The format, available by using the Program’s electronic access, available upon request from the Program Coordinator or available online at www.state.tn.us/labor-wfd/mainforms.html, or a materially substantial equivalent approved by the Program Coordinator shall be used in all cases to detail the evaluation’s results. The MIR physician shall first review the determination by the attending physician that the claimant has reached Maximum Medical Improvement (MMI).
- (2) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR Registry physician concurs with the attending doctor’s determination of MMI, the report shall, at a minimum, contain the following:
 - (a) A brief description and overview of the claimant’s medical history as it relates to the subject injury, including reviewing and recapping all previous treatments.
 - (b) A statement of concurrence with the attending doctor’s determination of MMI;
 - (c) Pertinent details of the physical or psychiatric evaluation performed (both positive and negative findings);
 - (d) Results of any pertinent diagnostic tests performed (both positive and negative findings). Include copies of these tests with the report;
 - (e) An impairment rating consistent with the findings and utilizing a standard method as outlined in the applicable AMA Guides, calculated as a total to the whole person if appropriate. In cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community is allowed, however, a statement that the AMA Guides fails to cover the case as well as a statement of the system on which the rating was based shall be included;
 - (f) The rationale for the rating based on reasonable medical certainty, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, sections, tables, figures, and AMA Guides page numbers, when appropriate, to clearly show how the rating was derived; and
 - (g) A true or electronic signature and date by the MIR physician performing the evaluation certifying to the following:

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1. "It is my opinion, both within and to a reasonable degree of medical certainty that, based upon all information available to me at the time of the MIR impairment evaluation and by utilizing the relevant AMA Guides or other appropriate method as noted above, that the claimant has the permanent impairment so described in this report. I certify that the opinion furnished is my own, that this document accurately reflects my opinion, and that I am aware that my signature attests to its truthfulness. I further certify that my statement of qualifications to serve on the MIR Registry is both current and completely accurate."
- (3) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR physician does not concur with the attending doctor's determination of MMI, a report shall be completed similar to the one outlined above which documents and certifies to, in sufficient detail, the rationale for disagreeing and, if possible to determine, the expected date of full or partial recovery. The physician is still entitled to collect/retain the appropriate MIR fee.
- (4) Services rendered by an MIR Registry physician shall conclude upon the Program Coordinator's acceptance of the final "MIR Impairment Rating Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating and any necessary worksheets, as determined by the Program Coordinator. Once the report has been accepted the Program Coordinator will distribute copies of the report to the other parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Impairment Rating Report" the medical records file, including the final "MIR Impairment Rating Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with the Tennessee Board of Medical Examiners' rules.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.12 PEER REVIEW.

- (1) All MIR Impairment Rating Reports are subject to review for appropriateness and accuracy by an individual or organization designated by the Program Coordinator at any time. Repeated failure to properly apply the AMA Guides in determining an impairment rating, as determined solely and exclusively by the Medical Director, will result in penalties up to and including removal from the MIR Registry.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.13 REMOVAL OF A PHYSICIAN FROM THE REGISTRY.

- (1) Written complaints regarding any MIR Registry physician shall be submitted to the Program Coordinator. The Commissioner or the Commissioner's designee, upon the advice of the Medical Director, may remove a physician from the MIR Registry permanently or temporarily by placing a physician on inactive status based upon any of the following grounds:
 - (a) Misrepresentation on the "Application for Appointment to the MIR Registry" as determined by the Program Coordinator;
 - (b) Failure to timely report a conflict of interest in a case assignment, as determined by the Program Coordinator;

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- (c) Refusal or substantial failure to comply with the provisions of these Rules, including, but not limited to, repeated failure to determine impairment ratings correctly using the AMA Guides, as determined by the Medical Director;
 - (d) Failure to maintain the requirements of the Rules, as determined by the Program Coordinator; or
 - (e) Any other reason for the good of the Registry as determined solely and exclusively by the Commissioner or the Commissioner's designee.
- (2) Upon receipt of a complaint regarding a MIR Registry physician, the Program Coordinator shall send written notice of the complaint to such physician, stating the grounds of the complaint, and notifying the physician that he or she is at risk of being removed from the MIR Registry.
- (a) The physician shall have thirty (30) calendar days from the date the Notice of Complaint is issued to the physician in which to respond in writing to the complaint(s), and may submit any responsive supporting documentation to the Program Coordinator for consideration. Failure of the physician to submit a timely response to the Notice of Complaint may result in removal of the physician from the MIR Registry without further notice or recourse.
 - (b) The Commissioner or the Commissioner's designee, in consultation with the Medical Director, shall consider the complaint(s) and any response(s) from the physician in reaching a decision as to whether the physician shall be removed from the MIR Registry, and if removed, whether the removal will be permanent or temporary.
 - (c) Upon reaching a determination on the complaint(s), the Commissioner or the Commissioner's designee shall issue a written Notice of Determination and set forth the basis for the decision in such Notice. The determination set forth shall become final fifteen (15) days after issuance of the Notice of Determination, unless a timely request for reconsideration is received.
 - (d) A MIR Registry physician may seek reconsideration of an adverse decision from the Commissioner or the Commissioner's designee by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Determination. The Commissioner or the Commissioner's designee may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Commissioner or the Commissioner's designee shall issue a Notice of Determination upon Reconsideration which shall be the final decision.
 - (e) MIR Registry physicians shall remain active on the MIR Registry pending a final decision on any complaint(s).
- (3) A physician who has been removed from the MIR Registry by the Commissioner or the Commissioner's designee may apply for reinstatement six (6) months after the date of removal by submitting a written request to the Program Coordinator.

Authority: *Public Chapter 962, § 24 (2004).*

0800-2-20-.14 OTHER PENALTIES.

- (1) Failure by any party to comply with any of these Rules for which no penalty has specifically been set forth herein shall subject that party to the appropriate civil penalties pursuant to the Act and as determined by the Commissioner or Commissioner's designee.

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Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.15 TIME LIMITS.

- (1) All time limits referenced in these Rules may be extended by the Program Coordinator in his or her sole and exclusive discretion.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.16 CLAIMANT COOPERATION.

- (1) Injured workers are expected to cooperate in good faith with the Program Coordinator in scheduling evaluations. Injured workers shall also cooperate in good faith with all reasonable requests made by MIR Registry physicians during their evaluation so that the physicians can make accurate findings.

Authority: Public Chapter 962, § 24 (2004).

0800-2-20-.17 OVERTURNING A MIR PHYSICIAN'S OPINION.

- (1) Parties are prohibited from seeking a second MIR Registry impairment rating for the same injury if an impairment rating was issued after the first MIR Registry evaluation. Permanent impairment ratings given by MIR Registry physicians after their assignment of cases involving the issuance of a MIR Registry three-physician listing from the MIR Registry shall be the only opinions presumed to be accurate, as set forth in the Act. This presumption may be rebutted only by clear and convincing evidence to the contrary. Opinions reached by any physicians utilized after mutually agreed upon selections not involving the issuance of an MIR Registry three-physician listing are not legally presumed to be accurate and shall carry no additional evidentiary weight in any proceedings, even in cases where the physician selected may also serve on the MIR Registry.

Authority: Public Chapter 962, § 24 (2004).

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd day of August, 2005. (08-53)

RULEMAKING HEARINGS

THE TENNESSEE MASSAGE LICENSURE BOARD - 0670

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of amendments to rules and repeal of a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-1-111, 63-1-138, 63-18-102, 63-18-104, 63-18-105, 63-18-106, 63-18-108, 63-18-111, 63-18-112, 63-18-115, and Public Chapters, 232, 234 and 467 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 18th day of October, 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 0870-1-.01 Definitions, is amended by deleting paragraph (10) in its entirety and substituting instead the following language, and is further amended by adding the following language as new, appropriately alphabetized and numbered paragraphs, so that as amended, the new paragraph (10) and the new appropriately alphabetized and numbered paragraphs shall read:

- (10) Establishment - Any location, or portion thereof, which advertises and/or provides to the public massage therapy services on the premises for compensation. Any licensed health care facility or any health care professional's office wherein massage therapy services are not advertised or provided except on an occasional outcall basis is not an establishment for purposes of this rule. Any location within a licensed health care facility or any health care professional's office which is dedicated to and maintained for the use of a massage therapist who performs occasional massage therapy services to the patients of the facility is a massage establishment for purposes of licensure under these rules and the portions of the facility or office wherein massage therapy services are provided must be in compliance with the standards established in rule 0870-1-.02. The term "occasional" as used in this rule means not more than twice in a one (1) week period.
- () Massage/bodywork/somatic – The manipulation of the soft tissues of the body with the intention of positively affecting the health and well being of the client.
- () Outcall – The provision of massage services outside of an "establishment" as defined by this rule and in a location at which there is neither the regular provision of nor the advertising of such services. For purposes of this definition, the term "regular" means more than twice in a one (1) week period.

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Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-102, 63-18-104, and 63-18-111.

Rule 0870-1-.02 Practice Standards and Inspection of Establishments, is amended by deleting parts (2) (b) 4. and (5) (c) 3. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (5) (d) but not its parts, and substituting instead the following language, and is further amended by deleting part (5) (d) 3. in its entirety and substituting instead the following language, so that as amended, the new parts (2) (b) 4. and (5) (c) 3., the new subparagraph (5) (d) but not its parts, and the new part (5) (d) 3. shall read:

- (2) (b) 4. The person to whom the establishment license is issued shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise insuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.
- (5) (c) 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-1-.06.
- (5) (d) Failure to Allow or Appear for Inspection – An establishment whose owner or operator fails to allow an inspection to be scheduled shall be deemed to have failed the inspection. An establishment whose owner or operator does not appear for his/her scheduled inspection shall be deemed to have failed the inspection unless the Board’s administrative office or the Board’s authorized representative is notified at least twenty-four (24) hours prior to the scheduled appointment time for inspection. In either circumstance, a subsequent scheduled inspection shall be considered as a reinspection. When a reinspection is necessitated as a result of either circumstance, the following shall occur:
 - (5) (d) 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-1-.06.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-106, 63-18-108, and 63-18-111.

Rule 0870-1-.03 Necessity of Licensure, is amended by adding the following language as new paragraphs (3) and (4):

- (3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles “Massage Therapist (M.T.)” or “Licensed Massage Therapist (L.M.T.)” and to practice massage therapy, as defined in T.C.A. § 63-18-102. Violation of this rule, rule 0870-1-.19 (1) (q), or T.C.A. § 63-18-108 regarding use of titles shall constitute unethical conduct and subject the licensee to disciplinary action.
- (4) Students may not hold themselves out as massage therapists until such time as they are licensed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-102, 63-18-104, 63-18-105, 63-18-108, 63-18-111, and Public Chapter 467 of the Public Acts of 2005.

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Rule 0870-1-.04, Licensure and Provisional Licensure Process, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting subpart (1) (f) 1. (iii) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparts (1) (f) 1. (iv) and (1) (f) 1. (v), and is further amended by deleting subparagraph (1) (l) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (2) in its entirety and renumbering paragraph (3) as paragraph (2), so that as amended, the new subparts (1) (f) 1. (iii), (1) (f) 1. (iv) and (1) (f) 1. (v), and the new subparagraph (1) (l) shall read:

0870-1-.04 LICENSURE PROCESS.

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

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111, and 63-18-112.*

Rule 0870-1-.05 Establishment Licensure Process, is amended by deleting subparagraph (2) (a) in its entirety, and is further amended by deleting paragraph (3), subparagraph (5) (a), and paragraph (6) in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (8) (e) in its entirety, and is further amended by deleting paragraph (12) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3), subparagraph (5) (a), and paragraphs (6) and (12) shall read:

- (3) "Applicant", for purposes of this rule shall mean the person under whose name the massage establishment shall be licensed. The applicant need not be licensed as a massage therapist. However, all persons employed to or who are providing massage therapy on the premises must be licensed by complying with the provisions of rule 0870-1-.04, or no establishment license can be issued or a previously issued license shall be processed for revocation.
- (5) (a) The applicant shall attach to the application copies of the current licenses of all massage therapists performing massage therapy at that establishment.

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- (6) Except for applicants who are corporations doing business in Tennessee, every applicant shall have submitted, to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters, attesting to the applicant's personal character and professional ethics.
- (12) All applications shall be sworn to and signed by the applicant and notarized.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, and 63-18-111.

Rule 0870-1-.06 Fees, is amended by deleting subparagraphs (1) (a) and (1) (c) in their entirety and substituting instead the following language, and is further amended by deleting subparagraphs (1) (h) and (2) (h) in their entirety and renumbering subparagraphs (1) (i) and (2) (i) as (1) (h) and (2) (h), so that as amended, the new subparagraphs (1) (a) and (1) (c) shall read:

- (1) (a) Individual Application Fee - A non-refundable fee to be paid by all applicants for a massage therapist's license including those seeking licensure by reciprocity. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.
- (1) (c) Biennial Licensure Renewal Fee - A non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee must be received on or before the expiration date of the license.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, and 63-18-111.

Rule 0870-1-.07 Application Review, Approval, and Denial, 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) A license may be issued pursuant to the initial determination made by the Board member or the Board's consultant or designee reviewing the application. However, such determination shall not become fully effective until such time as the full Board ratifies it.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111, and 63-18-112.

Rule 0870-1-.08 Examination, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (3) and (4) in their entirety, so that as amended, the new paragraph (1) shall read:

- (1) With the exception of applicants qualifying pursuant to Rule 0870-1-.05, all persons intending to apply for licensure must successfully complete one (1) of the competency examinations adopted by the Board pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Board Administrative Office as part of the application process contained in Rule 0870-1-.04.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, and 63-18-111.

RULEMAKING HEARINGS

Rule 0870-1-.09 Licensure Renewal, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) The due date for certification renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division's "biennial renewal system" as contained on the expiration date on the renewal certificate.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-18-111.

Rule 0870-1-.11 Retirement, Inactivation, and Reactivation of Licensure, is amended by deleting the name of the rule in its entirety and substituting instead the following language, and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (2) (a) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraphs (4) (a) and (4) (b) in their entirety and substituting instead the following language, so that as amended, the new name of the rule, the new paragraph (2) but not its subparagraphs, the new subparagraph (2) (a), the new paragraph (3) but not its subparagraphs, and the new subparagraphs (4) (a) and (4) (b) shall read:

0870-1-.11 RETIREMENT, REINSTATEMENT, INACTIVATION, AND REACTIVATION OF LICENSURE

- (2) Any licensee whose individual license has been retired may reenter active practice by doing the following:
 - (2) (a) Submit a reinstatement application to the Board Administrative Office; and
 - (3) Establishments that wish to retain their licenses but not operate as an establishment may avoid compliance with the licensure renewal process requirements by doing the following:
 - (4) (a) Submit a reactivation application to the Board Administrative Office; and
 - (4) (b) Pay the establishment biennial licensure renewal fee and state regulatory fee as provided in rule 0870-1-.06, and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-111, 63-18-104, and 63-18-111.

Rule 0870-1-.12 Continuing Education, is amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (b) but not its parts, and substituting instead the following language, and is further amended by deleting parts (4) (b) 1. and (4) (b) 4. in their entirety and substituting instead the following language, and is further amended by adding the following language as part (4) (b) 5., and is further amended by deleting subparagraph (4) (c) but not its parts, and substituting instead the following language, and is further amended by deleting parts (4) (c) 3., and (4) (c) 5. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (e) in its entirety and renumbering the remaining subparagraphs accordingly, so that as amended, the new subparagraph (3) (b), the new subparagraph (4) (b) but not its parts, the new parts (4) (b) 1., (4) (b) 4. and (4) (b) 5., the new subparagraph (4) (c) but not its parts, and the new parts (4) (c) 3. and (4) (c) 5. shall read:

- (3) (b) Each massage therapist must, on the biennial licensure renewal form, attest to timely attendance and completion of the required continuing education hours.

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- (4) (b) The following sponsors or courses need not receive prior approval and shall constitute Board approved continuing education courses:
 - (4) (b) 1. Any approved NCBTMB or other NOCA (National Organization for Competency Assurance) approved course as described in paragraph (1).
 - (4) (b) 4. Colleges or universities accredited by the United States Department of Education as described in paragraph (1).
 - (4) (b) 5. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institutions approved by the Tennessee Higher Education Commission, Board of Regents or its equivalent in another state(s). If such course is taken for or assigned quarter or semester credit hours, three (3) semester hours or equivalent quarter hours shall be equivalent to fifteen (15) continuing education hours. No credits will be counted for courses failed.
- (4) (c) If a sponsor is unable to obtain, or chooses not to obtain, approval of a course from the NCBTMB or the NOCA, the sponsor may request Board approval by submitting the following information to the Board Administration Office at least forty-five (45) days prior to the proposed or scheduled date of the course:
 - (4) (c) 3. Brief resume of all lecturers including experience or training in the subject matter being taught.
 - (4) (c) 5. Proposed or scheduled date of course.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-18-111, and Public Chapter 234 of the Public Acts of 2005.

0870-1-.16 Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting part (3) (b) 3. in its entirety and renumbering the present part (3) (b) 4. as (3) (b) 3., and is further amended by adding the following language as new paragraphs (5) and (6), so that as amended, the new catchline and the new paragraphs (5) and (6) shall read:

0870-1-.16 OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, AND SCREENING PANELS.

- (5) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.
- (6) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-18-108, 63-18-111, and Public Chapter 234 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 0870-1-.19 Professional Ethical Standards, is amended by deleting part (1) (s) 3. in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (1) (t), so that as amended, the new part (1) (s) 3. and the new subparagraph (1) (t) shall read:

- (1) (s) 3. where required by law to report to state or federal agencies; and
- (1) (t) Not practice in an unlicensed massage establishment. A massage therapist may not be prosecuted under this rule if he/she has a written statement, signed by the establishment owner and notarized, stating that the establishment is licensed prior to the date of the therapist's employment.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, and 63-18-111.

Rule 0870-1-.19 Professional Ethical Standards, is amended by adding the following language as new subparagraphs (1) (l), (1) (m) and (1) (n), and renumbering the remaining subparagraphs accordingly:

- (1) (l) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from dating or having physical relationships or clandestine meetings with any student while the student is enrolled, including the period of time between semesters of attendance; and
- (1) (m) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from soliciting or accepting any student to be a client or customer for massage therapy services while the student is enrolled, including the period of time between semesters of attendance; and
- (1) (n) Refrain from providing services when they are either physically or mentally incapable of safely doing so. The term "safely" as used in this rule means safety of the massage therapists and anyone they come in contact with during the course of professional practice; and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, 63-18-111, and 63-18-115.

REPEAL

Rule 0870-1-.10 Supervision – Provisional License, is repealed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-111, and Public Chapter 232 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of August, 2005. (08-43)

RULEMAKING HEARINGS

THE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS - 1020

There will be a hearing before the Tennessee Board of Examiners for Nursing Home Administrators to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-16-103. 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 Rm. of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 19th day of October, 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 1020-1-.03 Board Officers, Records, Meetings, Consultants, Change of Address and/or Name, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (11), so that as amended, the new catchline and the new paragraph (11) shall read:

1020-1-.03 Board Officers, Records, Meetings, Consultants, Change of Address and/or Name, Declaratory Orders, and Screening Panels.

- (11) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-16-103, 63-16-108, and Public Chapter 234 of the Public Acts of 2005.

Rule 1020-1-.06, Preceptors, Administrators-In-Training and Administrator-in-Training Programs, is amended by deleting subparagraph (2) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (a) shall read:

- (2) (a) To remain certified as a preceptor a licensee must:
1. on or before December 31st of every year after initial certification, successfully complete nine (9) clock hours of Board approved continuing education within the calendar year in addition to the continuing education hours required for licensure renewal pursuant to rule 1020-1-.12. Credit for six (6) hours of continuing education per year shall be given to a preceptor upon the successful completion of an A.I.T. program; and

RULEMAKING HEARINGS

2. hold an active, current and unrestricted license in Tennessee as a Nursing Home Administrator; or
3. hold an active, current and unrestricted license in another state as a Nursing Home Administrator and submit proof of successful completion of twenty-seven (27) clock hours of NAB-approved continuing education for every year the licensee practiced in another state while his/her Tennessee license was expired or retired.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, 63-16-104, and 63-16-107.

Rule 1020-1-.08, Procedures for Licensure, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) An applicant shall submit with his application a “passport” style photograph taken within the preceding twelve (12) months and attach it to the appropriate page of the application. Photocopies are not accepted.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-106, and 63-16-109.

Rule 1020-1-.12, Continuing Education, is amended by adding the following language as new subparagraph (1) (d):

- (1) (d) Waiver or Extension of Continuing Education Requirements.
 1. The Board may grant a waiver of the need to attend and complete the required clock hours of continuing education or the Board may grant an extension of the deadline to complete the required clock hours of continuing education if it can be shown that compliance was beyond the physical or mental capabilities of the person seeking the waiver.
 2. Waivers or extension of the deadline will be considered only on an individual basis and may be requested by submitting the following items to the Board Administrative Office prior to the expiration of the calendar year (December 31) in which the continuing education is due:
 - (i) A written request for a waiver or deadline extension which specifies which requirements are sought to be waived or which deadline is sought to be extended and a written and signed explanation of the reason for the request; and
 - (ii) Any documentation which supports the reason(s) for the waiver or deadline extension requested or which is subsequently requested by the Board.
 3. A waiver or deadline extension approved by the Board is effective only for the calendar year for which the waiver is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, and 63-16-107.

RULEMAKING HEARINGS

Rule 1020-1-.16, Scope of Practice, is amended by adding the following language as new paragraph (3):

- (3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Nursing Home Administrator" and to practice as a nursing home administrator as defined in T.C.A. §§ 63-16-101. Violation of this rule regarding use of titles shall subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-16-101, 63-16-103, 63-16-108, and Public Chapter 467 of the Public Acts of 2005.

Rule 1020-1-.18, Repealed is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following introductory language and new paragraphs (1) through (7), so that as amended, the new catchline, the new introductory language, and the new paragraphs (1) through (7) shall read:

1020-1-.18 Advertising. The following acts or omissions in the context of advertisements by any licensee shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-16-108.

- (1) Claims that convey the message that one licensee is better than another when superiority cannot be substantiated.
- (2) Misleading use of an unearned or non-health degree.
- (3) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (4) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (5) Use of any personal testimonial attesting to a quality of competency offered by a licensee that is not reasonably verifiable.
- (6) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (7) Communication of personal identifiable facts, data, or information about a nursing home resident without first obtaining the resident's consent.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, 63-16-108, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 2nd day of August, 2005. (08-02)

RULEMAKING HEARINGS

BOARD OF OPTOMETRY - 1045

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 24th day of October, 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 1045-2-.09, Ocular and Contact Lens Prescriptions and Office Equipment, is amended by adding the following language as new paragraph (2), and renumbering the present paragraphs (2) and (3) as paragraphs (3) and (4):

- (2) A contact lens prescription shall expire one (1) year after the date on which the prescription was issued, unless the optometrist who issued the prescription specifies an earlier expiration date based solely on the optometrist's professional judgment regarding the ocular health of the patient.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-8-112, and 63-8-126.

Rule 1045-2-.10, Disciplinary Actions, Civil Penalties, Declaratory Orders, Assessment of Costs, and Subpoenas, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (6) and renumbering the present paragraphs (6) and (7) as paragraphs (7) and (8), so that as amended, the new catchline and the new paragraph (6) shall read:

1045-2-.10 DISCIPLINARY ACTIONS, CIVIL PENALTIES, DECLARATORY ORDERS, SCREENING PANELS, ASSESSMENT OF COSTS, AND SUBPOENAS.

- (6) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-8-112, 63-8-120, and Public Chapter 234 of the Public Acts of 2005.

RULEMAKING HEARINGS

1045-2-.11 SCOPE OF PRACTICE, IS AMENDED BY ADDING THE FOLLOWING LANGUAGE AS NEW PARAGRAPH (6):

- (6) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles "Optometrist," "Doctor of Optometry," "Optometric Physician," or "O.D." and to practice optometry, as defined in T.C.A. §§ 63-8-102. Violation of this rule or T.C.A. §§ 63-8-113 and 63-8-120 regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-8-102, 63-8-112, 63-8-113, 63-8-120, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of August, 2005. (08-29)

RULEMAKING HEARINGS

BOARD OF OSTEOPATHIC EXAMINATION - 1050

There will be a hearing before the Tennessee Board of Osteopathic Examination to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-204, 63-9-101, 63-9-104, 63-9-106, 63-9-109, 63-9-111, 63-9-112, 63-9-116, and Public Chapters 12, 286, 434 and 467 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 21st day of October, 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 1050-2-.09 Officers, Records, Meeting Requests, Certificates of Fitness, Replacement Licenses, Consultants, Declaratory Orders and Screening Panels, 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 authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-111.

Rule 1050-2-.13 Specifically Regulated Areas and Aspects of Medical Practice, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (11), so that as amended, the new paragraphs (3) and (11) shall read:

- (3) Prescription writing shall be governed by Tennessee Code Annotated, Section 63-9-116 and Title 53, Chapter 10, Part 2.
- (11) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles "Osteopathic Physician," "Osteopathic Physician and Surgeon," "Doctor of Osteopathic Medicine," "Doctor of Osteopathy," or "D.O." and to practice

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osteopathic medicine, as defined in T.C.A. §§ 63-9-106. Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-9-106, 63-9-109, 63-9-111, 63-9-116, and Public Chapters 12, 434, and 467 of the Public Acts of 2005.

Rule 1050-2-.19 Medical Professional Corporations and Medical Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

- (1) Medical Professional Corporations (MPC) – Except as provided in this rule Medical Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A MPC need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic MPC doing business in Tennessee:
 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in another state; and/or
 2. A foreign or domestic general partnership, MPC or M PLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an M PLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
 - (c) Officers and Directors of Medical Professional Corporations -
 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and

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- (iv) Assistant Treasurer.
 - 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48- 101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a MPC.
- (d) Practice Limitations
- 1. Physician incorporators, shareholders, officers, or directors of a MPC, acting individually or on behalf of, or collectively as the MPC, shall exercise only such authority as an "employing entity" may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPC.
 - 2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a MPC that may violate the code of ethics or which gives the MPC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.
 - 3. Engaging in, or allowing another physician incorporator, shareholder, officer, or director, while acting on behalf of the MPC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6-214 (b)(1) or 63-9-111 (b)(1).
 - 4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a MPC.
 - 5. Nothing in these rules shall be construed as prohibiting a MPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician incorporators, directors, officers, shareholders, employees or contractors of the MPC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
 - 6. Nothing in these rules shall be construed as prohibiting a physician from owning shares of stock in any type of professional corporation other than a MPC so long as such ownership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
- (2) Medical Professional Limited Liability Companies (MPLLC) – Except as provided in this rule Medical Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.
- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.

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- (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 only the following may be members or holders of financial rights of a foreign or domestic M PLLC doing business in Tennessee:
1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in other states; and/or
 2. A foreign or domestic general partnership, MPC or M PLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an M PLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
- (c) Managers, Directors or Governors of a M PLLC
1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
 2. Only persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a M PLLC.
- (d) Practice Limitations
1. Physician members or holders of financial rights, managers, directors, or governors of a M PLLC, acting individually or on behalf of, or collectively as the M PLLC, shall exercise only such authority as an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the M PLLC.
 2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a M PLLC that may violate the code of ethics or which gives the M PLLC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.

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3. Engaging in, or allowing another physician member, officer, manager, director, or governor, while acting on behalf of the M PLLC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6- 214 (b) (1) or 63-9-111 (b) (1).
 4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a M PLLC.
 5. Nothing in these rules shall be construed as prohibiting a M PLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician members or holders of financial rights, governors, officers, managers, employees or contractors of the M PLLC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6- 204.
 6. Nothing in these rules shall be construed as prohibiting a physician from being a member of any type of professional limited liability company other than a M PLLC so long as such membership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
 7. All M PLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a MPC or a M PLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the MPC and/or M PLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the MPC and/or M PLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the MPC and/or M PLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.

RULEMAKING HEARINGS

- (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the MPC and/or M PLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
 - (f) If, after the proceeding the Board finds that a MPC and/or M PLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (5) The authority to own shares of stock or be members or holders of financial rights in an MPC or an M PLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-204, 63-9-101, 63-9-104, 63-9-111, and Public Chapter 286 of the Public Acts of 2005.

Rule 1050-3-.01 Definitions, is amended by deleting paragraphs (2) and (3) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2) and (3) shall read:

- (2) Full Certification - Certification obtained by submitting certification issued by the A.R.R.T. which will enable the holder to perform, except for bone densitometry, any and all procedures or functions in a physician's office.
- (3) Limited Certification - Certification issued by the Tennessee Board of Osteopathic Examination which enables the holder to perform only those radiological procedures or functions intended for the body areas or specialty indicated on the issued certification, other than those procedures involving the administration of contrast media.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101 and 63-9-112.

Rule 1050-3-.02 Scope of Practice, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) A.R.R.T. certificate holders are fully certified and may perform any and all radiographic procedures or functions in a physician's office that are within the American Society of Radiologic Technologists' (A.S.R.T.) scope of practice for radiographers.
 - (a) Performing bone densitometry is not considered to be within the A.S.R.T.'s scope of practice for radiographers.

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- (b) A.R.R.T. certificate holders who wish to perform bone densitometry and who receive initial certification as an x-ray operator in Tennessee after September 1, 2006 are required to:
1. obtain the A.R.R.T.'s certification in bone densitometry (BD) by successfully completing the A.R.R.T.'s Bone Densitometry Clinical Experience Requirements; or
 2. obtain limited certification in bone densitometry, as provided in this chapter.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101 and 63-9-112.

Rule 1050-3-.05 Obtaining and Upgrading Full and Limited Certification, is amended by deleting part (1) (b) 1. and subparagraph (3) (a) in their entirety and substituting instead the following language, so that as amended, the new part (1) (b) 1. and the new subparagraph (3) (a) shall read:

- (1) (b) 1. An applicant shall cause to be submitted from the radiological educational course director to the Board Administrative Office certification of any course(s) required by rule 1050-3-.07(2) which shall include certification from the clinical training supervisor(s) of successful completion of the required clock hours of clinical training for each specialty area in which certification is sought.
- (3) (a) Having the director of a Board approved specialty area(s) radiological education course(s) submit directly to the Board Administrative Office documentation indicating the additional clock hours and type of education received as required by rule 1050-3-.07 (2) (b) and (c) along with certification from the clinical training supervisor(s) of successful completion of the clock hours of clinical training for each separate area in which certification is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-112.

Rule 1050-3-.07 Educational Course, Approval and Curriculum for Limited Certification, is amended by deleting part (2) (c) 1. in its entirety and substituting instead the following language, so that as amended, the new part (2) (c) 1. shall read:

- (2) (c) 1. Clinical Training - Defined as "hands-on" observation and participation in the production of diagnostic radiographs. Clinical training must be supervised by either a residency-trained radiologist, or by a licensed physician in conjunction and consultation with a fully-licensed and registered operator (A.R.R.T. technologist) with at least three (3) years experience when appropriate. This training shall consist of at least sixty (60) clock hours for each specialty area in which certification is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-112.

Rule 1050-3-.08 Examinations for Certification, is amended by deleting part (2) (a) 3. in its entirety, and is further amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (b) shall read:

- (3) (b) It is the applicant's responsibility to attach the certified passing test results to the application for certification.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-112.

RULEMAKING HEARINGS

The notice of rulemaking set out herein was properly filed in the Department of State on the 24th day of August, 2005. (08-54)

RULEMAKING HEARINGS

TENNESSEE REAL ESTATE COMMISSION - 1260

There will be a hearing before the Tennessee Real Estate Commission to consider the promulgation of rules and amendments to rules pursuant to T. C. A. § 62-13-203(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 Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. (Central Time) on Wednesday, November 2, 2005.

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

For a copy of this Notice of Rulemaking Hearing, contact the Tennessee Real Estate Commission, attention Bruce Lynn, Tennessee Real Estate Commission, 500 James Robertson Parkway, 1st Floor, Nashville, Tennessee 37243 at (615) 741-2273.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1260-1 LICENSING

AMENDMENTS

Paragraph (1) of rule 1260-1-.04 Licenses is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (1) shall read:

- (1) No principal broker shall permit a broker, affiliate broker or time-share salesperson under his supervision to engage in the real estate business unless the broker, affiliate broker or time-share salesperson has been issued a valid license and is covered by an errors and omissions insurance policy.

Authority: T. C. A. §§62-13-112, 62-13-203(a) and 62-13-301.

CHAPTER 1260-2 RULES OF CONDUCT

AMENDMENTS

Paragraph (2) of rule 1260-2-.01 Supervision of Affiliate Brokers is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (2) shall read:

- (2) No principal broker shall engage a licensee (other than as a property manager) who lives more than fifty (50) miles by a straight line calculation from the firm office, unless the principal broker demonstrates in writing to the Tennessee Real Estate Commission's satisfaction that the distance involved is not unreasonable and that adequate supervision can be provided. For purposes of

RULEMAKING HEARINGS

this rule, a property manager is defined as a licensee who engages exclusively in leasing and otherwise managing rental properties.

Authority: T. C. A. §§62-13-203(a) and 62-13-312(b)(15).

Rule 1260-2-.03 Offices is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that as amended the rule shall read:

1260-2-.03 OFFICES.

- (1) Signs. Each licensed real estate firm shall conspicuously display on the outside of the firm's place of business a sign which contains the name of the real estate firm as registered with the Commission.
- (2) Zoning. An application for a license or change of location shall be accompanied by a written certification (from the proper governmental authority) of compliance with zoning laws and ordinances.
- (3) Branch Offices.
 - (a) For purposes of T. C. A. §62-13-309(d), a licensee is deemed to maintain a "branch" if the licensee:
 1. Advertises the office in any manner for the purpose of attracting the public;
 2. Has a mail drop at the office which is registered with and served by the United States Postal Service; or
 3. Invites or solicits telephone calls to the office (by such means as advertising or listing in a telephone directory).
 - (b) Model Homes and Modular Units. A model home may be utilized in a subdivision or on a commercial lot and a modular unit may be utilized in subdivisions which are under construction for purposes of soliciting business and will not be required to be licensed as a branch office as long as the model home or modular unit meets the following requirements:
 1. The model home or modular unit location and/or telephone number is only advertised in conjunction with advertising the main firm office and such advertising complies with the statutes, rules and regulations of the Commission;
 2. The model home or modular unit does not have a mail drop;
 3. The model home or modular unit is not the sole sales office for the firm;
 4. The model home or modular unit is not utilized to allow unlicensed activity by individuals in performing any of the acts requiring licensure under T. C. A. §62-13-101, et seq.; and
 5. The principal broker of the main firm office shall adequately supervise licensees operating from model homes or modular units as required by T. C. A. §62-13-312 and any rules promulgated thereunder.

RULEMAKING HEARINGS

Authority: T. C. A. §§62-13-203(a), 62-13-309 and 62-13-312.

Rule 1260-2-.08 Offers to Purchase is amended by adding the following sentence to the end of the existing language:

In the event an offer is rejected, the broker or affiliate broker shall request the seller to note the rejection on the offer and return the same to the offeror or the offeror's agent.

Authority: T. C. A. §62-13-203(a).

Paragraph (2) of rule 1260-2-.12 Advertising is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (2) shall read:

(2) General Principles

- (a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
- (b) All licensees shall advertise under the firm name offers to purchase, sell, rent, or lease any property. All advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number.
- (c) No licensee shall post a sign in any location advertising property for sale without written authorization from the owner of the advertised property or the owner's agent.

Authority: T. C. A. §§62-13-203(a), 62-13-301 and 62-13-310(b).

CHAPTER 1260-2 RULES OF CONDUCT

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1260-2-.36 Exclusive Buyer Representation Agreements

1260-2-.36 Exclusive Buyer Representation Agreements. An exclusive buyer representation agreement is an agreement in which a licensee is engaged to represent a buyer in the purchase of a property to the exclusion of all other licensees. Prior to entering into any such agreement a licensee must advise and confirm in writing to such buyer the following:

- (1) that the buyer should make all arrangements to view or inspect a property through the licensee and should not directly contact other licensees;
- (2) that the buyer should immediately inform any other licensee the buyer may come into contact with (for example, at an open house) that he or she is represented by the licensee; and
- (3) whether the buyer will owe a commission in the event the buyer purchases a property without the assistance of the licensee through another licensee or directly from an owner.

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Authority: T. C. A. §§62-13-203(a), 62-13-401 and 62-13-402.

CHAPTER 1260-5 EDUCATIONAL REQUIREMENTS

AMENDMENTS

Paragraph (3) of rule 1260-5-.12 Affiliate Brokers is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (3) shall read:

- (3) (a) An affiliate broker whose license was originally issued on or after July 1, 1980 will not be eligible for renewal of the license unless, during the immediately preceding two-year license period, such affiliate broker satisfactorily completes at least sixteen (16) hours of continuing real estate education. However, this subparagraph shall not apply to an affiliate broker whose license was temporarily retired in accordance with T. C. A. § 62-13-318 for the entire immediately preceding two-year license period.
- (b) An affiliate broker will not receive continuing education credit for courses completed prior to licensure, or during a prior license period.

Authority: T. C. A. §§62-13-106, 62-13-203(a) and 62-13-303.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of August, 2005. (08-59)

RULEMAKING HEARINGS

BOARD OF RESPIRATORY CARE - 1330

There will be a hearing before the Tennessee Board of Respiratory Care to consider the promulgation of amendments to rules and new rules 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 31st day of October, 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 1330-1-.02, Scope of Practice, is amended by designating the present language of the rule as paragraph (1) and by adding the following language as new paragraph (2):

(2) Use of Titles

- (a) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles and/or acronyms "Certified Respiratory Therapist (CRT)" or "Certified Respiratory Therapy Technician (CRTT)" as defined in T.C.A. §§ 63-27-102.
- (b) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title and/or acronym "Registered Respiratory Therapist (RRT)." as defined in T.C.A. §§ 63-27-102.
- (c) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to practice as a respiratory care practitioner as defined in T.C.A. §§ 63-27-102.
- (d) Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-27-104, 63-27-112, and Public Chapter 467 of the Public Acts of 2005.

RULEMAKING HEARINGS

Rule 1330-1-.19 Board Officers, Consultants, Records, Declaratory Orders, Advisory Rulings, and Subpoenas is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (7), so that as amended, the new catchline and the new paragraph (7) shall read:

1330-1-.19 BOARD OFFICERS, CONSULTANTS, RECORDS, DECLARATORY ORDERS, ADVISORY RULINGS, SUBPOENAS AND SCREENING PANELS.

- (7) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-107, 4-5-202, 4-5-204, 63-1-138, 63-27-104, 63-27-112, and Public Chapter 234 of the Public Acts of 2005.

NEW RULES

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1330-1-.03	Delivery of Respiratory Equipment to a Patient's Place of Residence
1330-1-.20	Advertising

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

- (1) When respiratory equipment is delivered and installed in a patient's place of residence, the following acts constitute the practice of respiratory care because they are a part of the administration of medical gasses:
- (a) Initial patient assessment;
 - (b) Attachment of the respiratory equipment to the patient;
 - (c) Ongoing assessment of the patient's response to the administration of the medical gas;
 - (d) Initial and ongoing instruction and education of the patient (and of the patient's family or other caregiver, where relevant) with respect to the role of the respiratory equipment in managing the patient's disease or condition; and
 - (e) Recommendation to the physician of needed modifications in the physician's order.
- (2) The following acts do not constitute the practice of respiratory care:
- (a) Delivery of respiratory equipment and supplies (initial and replacement) to the patient's place of residence;
 - (b) Assembly of respiratory equipment in the patient's place of residence;
 - (c) Explanation to the patient of the proper operation and maintenance of the following respiratory equipment:

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1. Cylinders used with low-flow (set at less than 6.00 liters per minute) nasal cannula;
 2. Pressure regulators/Flow controllers used with low-flow (set at less than 6.00 liters per minute) nasal cannula;
 3. Home liquid oxygen systems used with low-flow (set at less than 6.00 liters per minute) nasal cannula;
 4. Oxygen concentrators used with low-flow (set at less than 6.00 liters per minute) nasal cannula;
 5. Oxygen analyzers;
 6. Humidifiers; and
 7. Small volume medication nebulizers with air compressors.
- (d) Initial inspection and assessment of the environment in which the respiratory equipment is to be used;
- (e) Exchange of empty medical gas cylinders;
- (f) Refilling of liquid oxygen containers; and
- (g) Servicing (including repair and maintenance) of respiratory equipment.
- (3) With respect to the following respiratory equipment, all acts except delivery, repair and maintenance constitute the practice of respiratory care:
- (a) Continuous Positive Airway Pressure Devices;
 - (b) Bi-Level Positive Airway Pressure Devices;
 - (c) Ventilators;
 - (d) Apnea monitors;
 - (e) High-flow (6.00 liters per minute or higher) nasal cannula;
 - (f) All other oxygen delivery devices; and
 - (g) All other respiratory equipment not listed in subparagraph (2) (c).
- (4) The placement of medication in a small volume medication nebulizer with air compressor and the instruction of a patient about the medication constitutes the practice of respiratory care.

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

RULEMAKING HEARINGS

1330-1-.20 ADVERTISING. The following acts or omissions in the context of advertisements by any licensee shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-27-112.

- (1) Claims that convey the message that one licensee is better than another when superiority cannot be substantiated.
- (2) Misleading use of an unearned or non-health degree.
- (3) Misrepresentation of a licensee's credentials, training, experience, or ability.
- (4) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
- (5) Use of any personal testimonial attesting to a quality of competency offered by a licensee that is not reasonably verifiable.
- (6) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (7) Communication of personal identifiable facts, data, or information about a patient without first obtaining the patient's consent.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-27-104, 63-27-112, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 17th day of August, 2005. (08-35)

RULEMAKING HEARINGS

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

There will be a hearing before the Tennessee Board of Occupational and Physical Therapy Examiners' Committee of Occupational Therapy to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-13-108. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CST) on the 26th day of October, 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 Flr., Cordell Hull Building, 425 5th Ave. N., Nashville, TN 37247-1010, (615) 532-4397.

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

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1150-2-.02, Scope of Practice is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (4), so that as amended, the new catchline and the new paragraph (4) shall read:

1150-2-.02 SCOPE OF PRACTICE AND SPECIFICALLY REGULATED ASPECTS.

- (4) Specifically Regulated Aspects
 - (a) Licensed occupational therapists, including educators, are required to make information available to patients, legal guardians of patients, and/or the general public regarding how and where a complaint can be filed with the Committee of Occupational Therapy against an occupational therapist or an occupational therapy assistant.
 - (b) The Committee of Occupational Therapy will post the required information on its Internet web page and, upon request, will mail an informative brochure template that is suitable for reprinting to the licensee.
 - (c) Licensees who display informative signs in their waiting, examining and treatment rooms shall be deemed compliant with this rule.
 - (d) Licensees who make available informative brochures in their waiting, examining and treatment rooms shall be deemed compliant with this rule.
 - (e) Licensees who obtain from patients or legal guardians of patients a signed document acknowledging communication of the information contemplated in paragraph (1) shall be deemed compliant with this rule

RULEMAKING HEARINGS

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-102, 63-13-108, and 63-13-201.

Rule 1150-2-.03, Necessity of Licensure, is amended by adding the following language as new paragraph (4):

- (4) Teaching or instruction in an occupational therapy program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) constitutes the practice of occupational therapy and the provision of occupational therapy services to the public requiring licensure.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-202, and 63-13-212.

Rule 1150-2-.06, Fees, is amended by deleting subparagraphs (4) (a), (4) (g), and (4) (i) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (4) (a), (4) (g), and (4) (i) shall read:

(4) (a) Application	\$ 25.00	\$ 15.00
(4) (g) Registration	\$ 40.00	\$ 30.00
(4) (i) Certificate Fee	\$ 35.00	\$ 30.00

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

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1150-2-.13 Advertising

1150-2-.13 ADVERTISING.

- (1) Policy Statement. The lack of sophistication on the part of many of the public concerning occupational therapy services, the importance of the interests affected by the choice of an occupational therapist and the foreseeable consequences of unrestricted advertising by occupational therapists which is recognized to pose special possibilities for deception, require that special care be taken by physicians to avoid misleading the public. The occupational therapist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by occupational therapists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions
 - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of an occupational therapist who is licensed to practice in Tennessee.

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- (b) Licensee - Any person holding a license to practice occupational therapy in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
 - (c) Material Fact - Any fact which an ordinary reasonable and prudent person would need to know or rely upon in order to make an informed decision concerning the choice of occupational therapists to serve his or her particular needs.
 - (d) Bait and Switch Advertising - An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised service or merchandise, in order to sell something else, usually for a higher fee or on a basis more advantageous to the advertiser.
 - (e) Discounted Fee - Shall mean a fee offered or charged by a person or product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee".
- (3) Advertising Fees and Services
- (a) Fixed Fees. Fixed fees may be advertised for any service. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professional recognized components within generally accepted standards that are required to complete the service.
 - (b) Range of Fees. A range of fees may be advertised for services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
 - (c) Discount Fees. Discount fees may be advertised if:
 - 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
 - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular, non-discounted fee for that service.
 - (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement.
 - (e) Time Period of Advertised Fees.
 - 1. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
 - 2. If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.

RULEMAKING HEARINGS

- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall constitute unprofessional and/or unethical conduct, and subject the licensee to disciplinary action pursuant to T.C.A. § 63-13-209.
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
 - (b) The misleading use of an unearned or non-health degree in any advertisement.
 - (c) Promotion of professional services which the licensee knows or should know is beyond the licensee's ability to perform.
 - (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective client.
 - (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
 - (f) The use of any personal testimonial attesting to a quality of competency of a service or treatment offered by a licensee that is not reasonably verifiable.
 - (g) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
 - (h) The communication of personal identifiable facts, data, or information about a patient without first obtaining patient consent.
 - (i) Any misrepresentation of a material fact.
 - (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
 - (k) Statements concerning the benefits or other attributes of medical procedures or products that involve significant risks without including:
 - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
 - 2. The availability of alternatives; and
 - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
 - (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
 - (m) Failure to comply with the rules governing advertisement of fees and services, or advertising records.

RULEMAKING HEARINGS

- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Committee may require the licensee to furnish data or other evidence pertaining to those sales at the advertised fee as well as other sales.
 - (o) Misrepresentation of a licensee's credentials, training, experience, or ability.
 - (p) Failure to include the corporation, partnership or individual licensee's name, address, and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
 - 1. Upon request provide a list of all licensees practicing at that location; and
 - 2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
 - (q) Failure to disclose the fact of giving compensation or anything of value to representative of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
 - (r) After thirty (30) days of the licensee's departure, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
 - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
 - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
- (5) Advertising Records and Responsibility
- (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
 - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.
 - (c) A recording of every advertisement communicated by electronic media, and a copy of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the Committee or its designee.
 - (d) At the time any type of advertisement is placed, the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness of any assertion, omission or representation of material fact set forth in the advertisement or public information.

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- (6) Severability. It is hereby declared that the sections, clauses, sentences and part of these rules are severable, are not matters of mutual essential inducement, and any of them shall be rescinded if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reason be questioned in court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instance shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-13-108, 63-13-209, 63-13-211, and Public Chapter 467 of the Public Acts of 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 19th day of August, 2005. (08-42)

RULEMAKING HEARINGS

BOARD OF VETERINARY MEDICAL EXAMINERS - 1730

There will be a hearing before the Tennessee Board of Veterinary Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-12-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 22nd day of November, 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 1730-1-.06, License, is amended by adding the following language as new paragraph (5):

- (5) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Veterinarian," "Doctor of Veterinary Medicine," "D.V.M. or V.M.D.", and to practice veterinary medicine, as defined in T.C.A. § 63-12-103. Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-102, 63-12-103, 63-12-106, 63-6-204, 63-12-112, and 63-12-124.

Rule 1730-4-.07, Requirements for Inspections, is amended by deleting paragraph (1) but not its subparagraphs and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs shall read:

- (1) Upon receipt of a completed application packet and fees an on-site inspection will be scheduled by a premises inspector. The inspection will be limited to the physical location where the euthanasia and/or pre-euthanasia solutions will be stored and administered, and a review of the paperwork requirements with the responsible person of the entity and/or the C.A.E.T.(s).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-129, and 63-12-141.

Rule 1730-4-.11, Unprofessional Conduct, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

RULEMAKING HEARINGS

- (1) Failing to maintain a record of each animal euthanized, and the euthanasia and/or pre-euthanasia solution dosages, or failing to maintain a record of how the euthanasia and/or pre-euthanasia drugs were obtained.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-124, and 63-12-141.

Rule 1730-4-.13, Dispensing, Or Otherwise Distributing Pharmaceuticals, is amended by deleting paragraphs (2) and (3) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2) and (3) shall read:

- (2) A record of all euthanasia and pre-euthanasia solutions administered shall be kept.
- (3) The only drugs approved by the Board for the euthanasia of animals by a licensed veterinarian, a licensed veterinary technician employed by and functioning under the direct supervision of a licensed veterinarian, or a certified animal euthanasia technician in a certified animal control agency shall be sodium pentobarbital and all commercially available F.D.A. approved euthanasia agents containing sodium pentobarbital. The only drugs approved by the Board for the pre-euthanasia of animals by a certified animal euthanasia technician in a certified animal control agency shall be acepromazine and xylazine.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, and 63-12-141.

Rule 1730-5-.01, Definitions, is amended by deleting paragraph (7) in its entirety and substituting instead the following language, so that as amended, the new paragraph (7) shall read:

- (7) Certified Animal Euthanasia Technician (C.A.E.T.)—A person employed by a certified animal control agency who is authorized by the Board of Veterinary Medical Examiners (BVME) to humanely euthanize animals by administering sodium pentobarbital and the drugs referred to in Rules 1730-4-.13 and Rule 1730-5-.14 which have been approved by the BVME for the euthanasia and pre-euthanasia of animals in a certified animal control agency.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, and 63-12-141.

Rule 1730-5-.14, Dispensing, Or Otherwise Distributing Pharmaceuticals, is amended by deleting paragraphs (2) and (3) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2) and (3) shall read:

- (2) A record of all euthanasia and pre-euthanasia solutions administered shall be kept.
- (4) The only drugs approved by the Board for the euthanasia of animals by a licensed veterinarian, a licensed veterinary technician employed by and functioning under the direct supervision of a licensed veterinarian, or a certified animal euthanasia technician in a certified animal control agency shall be sodium pentobarbital and all commercially available F.D.A. approved euthanasia agents containing sodium pentobarbital. The only drugs approved by the Board for the pre-euthanasia of animals by a certified animal euthanasia technician in a certified animal control agency shall be acepromazine and xylazine.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, and 63-12-141.

RULEMAKING HEARINGS

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of August, 2005. (08-55)

WILDLIFE PROCLAMATIONS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

PROCLAMATION 05-23 MIGRATORY BIRD HUNTING SEASONS AND REGULATIONS

Pursuant to the authority granted by Title 70, Tennessee Code Annotated, and Section 70-4-107 thereof, the Tennessee Wildlife Resources Commission hereby proclaims the following migratory bird hunting regulations effective October 1, 2005. Season dates and limits pending final Federal Frameworks.

SECTION I. HUNTING SEASONS

Species	Season Opens	Season Closes
A. Ducks, Coots, and Mergansers		
Reelfoot Duck Zone	Nov. 12 Dec. 3	Nov. 13 Jan. 29
Canvasback	Dec. 31	Jan. 29
Reelfoot Duck Zone shall include the waters of Reelfoot Lake.		
Remainder of State	Nov. 26 Dec. 3	Nov. 27 Jan. 29
Canvasback	Dec. 31	Jan. 29
B. Youth Waterfowl Hunting Season		
Reelfoot Duck Zone	Feb. 4	Feb. 5
Remainder of State	Feb. 4	Feb. 5

Youth waterfowl hunters must be 6-15 years of age or younger. An adult at least 21 years of age must accompany the youth hunter into the field and must remain in a position to take control of the hunting device. This adult cannot duck hunt but may participate in other open seasons. Geese, coots, gallinules, moorhens, and ducks, including pintails, may be taken by youths during the Youth Waterfowl Season, but canvasback seasons are closed during the Youth Waterfowl Season.

WILDLIFE PROCLAMATIONS

SECTION I. HUNTING SEASONS Season Opens Season Closes
(CONT.)

C.	Purple Gallinules and Common Moorhens		
	Reelfoot Duck Zone	Nov. 12 Dec. 3	Nov. 13 Jan. 22
	Remainder of State	Nov. 27 Dec. 3	Nov. 28 Jan. 22
D.	Virginia Rails and Sora Rails		
	Reelfoot Duck Zone	Nov. 12 Dec. 3	Nov. 13 Jan. 20
	Remainder of State	Nov. 26 Dec. 3	Nov. 27 Jan. 20
E.	White-fronted Geese	Dec. 3	Feb. 12
F.	Blue, Snow, and Ross' Geese	Nov. 12	Feb. 26
G.	Brant	Nov. 26	Jan. 30
H.	Canada Geese		
	1. Northwest MVP Zone: Mississippi Valley Population Lake, Obion, and Weakley Counties, and Those Portions of Gibson and Dyer Counties Not Included in the Southwest MVP Zone.	Dec. 3	Feb. 12
	2. Southwest MVP Zone: Mississippi Valley Population That portion of the state bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45.	Oct. 1 Dec. 11	Oct. 9 Jan. 29
Zone:	3. Kentucky/Barkley Lake Southern James Bay Population. That area west of Highway 13 not in the Northwest and Southwest MVP Zones.	Oct. 1 Dec. 11	Oct. 9 Jan. 29
	4. Remainder of the State:	Oct. 1 Dec. 1	Oct. 9 Jan. 30

WILDLIFE PROCLAMATIONS

SECTION I. HUNTING SEASONS	Season Opens	Season Closes
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(CONT.)

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

SECTION II. BOGOTA WILDLIFE MANAGEMENT AREA Draw Hunts for Pools 2, 4, 5, 7, and 12.

Hunting of waterfowl will be by computer draw and will occur on Fridays, Saturdays, and Sundays during the regular duck season except for opening weekends on which hunting will be Saturday and Sunday only. All hunting shall cease at 3:00 p.m. (CST) each day, except the last day of the season when hunting shall close at sunset.

SECTION III. LAUREL HILL LAKE. Duck and Goose season for Laurel Hill Lake is Saturday, Jan 14, 2006 through Sunday, Jan. 29, 2006. Hunting from temporary blind sites only (boat blinds allowed).

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

SECTION V. BAG AND POSSESSION LIMITS

A. Ducks and Mergansers

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

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

Possession Limit:

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

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

SECTION VI. REPEAL OF PRIOR PROCLAMATION

This proclamation repeals Proclamation No. 04-17, dated August 21, 2004.

Proclamation No. 05-23, received and recorded this 23rd day of August, 2005. (08-45)



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 July 1, 2005 and ending July 29, 2005.

A handwritten signature in black ink, reading "Riley C. Darnell". The signature is written in a cursive style with a large initial "R".

RILEY C. DARNELL
Secretary of State