

TAR

TENNESSEE ADMINISTRATIVE REGISTER



December 15 , 2006
Volume 32, Number 12

RILEY C. DARNELL
Secretary of State

Division of Publications
8th Floor, Snodgrass-Tennessee Tower
312 8th Avenue North
Nashville TN 37243 - 0310

DEPARTMENT OF STATE NONDISCRIMINATION POLICY STATEMENT

Pursuant to its policy of nondiscrimination, the Department of State does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its policies, or in the admission or access to, or treatment or employment in, its programs, services, or activities.

Equal Employment Opportunity/Affirmative Action inquiries or complaints should be directed to the Department of State, Bard G. Fisher, EEO/AA Coordinator, 7th Floor, Snodgrass/Tennessee Tower, 312 Eighth Avenue North, Nashville, TN, 37243-0311, (615) 741-7411, or Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. ADA inquiries or complaints should be directed to Mr. Fisher at the above mentioned location.

PUBLIC INSPECTION OF DOCUMENTS

A certified copy of each document filed with the Department of State, Division of Publications is available for public inspection from 8 A.M. to 4:30 P.M., Monday through Friday. Copies of documents may be made at a cost of 25 cents per page and \$2 for the certification page, payable in advance if requested. The Division of Publications is located on the Eighth Floor, Snodgrass/Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243 - 0310. Telephone inquiries may be made by calling (615) 741-2650, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299. Individuals with disabilities who wish to inspect these filings should contact the Division of Publications to discuss any auxiliary aids or services needed to facilitate such inspection. Such contact may be made in person, by writing, by telephone or otherwise and should be made at least ten (10) days in advance of the date such party intends to make such inspection to allow time for the Division of Publications to provide such aid or service.

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 Financial Institutions, 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.

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.

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.

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*.

Copies of Pages from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. Contact the Division of Publications, 8th Floor, Snodgrass-Tennessee Tower, 312 8th Avenue North, Nashville, Tennessee, 37243-0310 or call 615-741-2650.

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

DECEMBER 2006 T.A.R.

TABLE OF CONTENTS

ANNOUNCEMENTS

Financial Institutions, Department of
Announcement of Formula Rate of Interest 5
Maximum Effective Rate of Interest 5
Government Operations Committee
Announcement of Public Hearing..... 6-10
Health Services and Development Agency
Notice of Beginning of Review Cycle 11

EMERGENCY RULES

Emergency Rules Now In Effect..... 12
Agriculture, Department of 13-14

PROPOSED RULES

Labor and Workforce Development, Department of 15-20
Tennessee Student Assistance Corporation..... 21-44

PUBLIC NECESSITY RULES

Public Necessity Rules Now in Effect..... 45
Tennessee Student Assistance Corporation..... 46-69

RULEMAKING HEARINGS

Agriculture, Department of 70-78
Architectural and Engineering Examiners 79-83
Commerce and Insurance, Department of 84-88
Finance and Administration (TennCare), Department of 89-134
Health, Department of 135-175
Human Services, Department of 176-180
Licensing General Contractors, Board for 181-185
Mental Health and Developmental Disabilities, Department of 186-196
Optometry, Board of 197-198
Respiratory Care, Board of..... 199-200

CERTIFICATE OF APPROVAL 201

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 12.25%.

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.

Greg Gonzales

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 January 2006 is 8.71 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 4.71 percent.

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

Greg Gonzales

For more information on interest rates, go to <http://www.tennessee.gov/tdfi/rates/index.html>

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.

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID #	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-04-06	Nov 14, 2006	1240 Human Services Adult and Family Services Division	Rulemaking Hearing Rules	Amendments	2246	<i>Chapter 1240-4-2 Licensure Rules for Drop-In Child Care Centers</i> 1240-4-2-.02 Definitions 1240-4-2-.04 Ownership Organization and Administration 1240-4-2-.05 Staff Requirements 1240-4-2-.08 Health and Safety	Kim Beals Citizens Plaza Building, 15th Floor 400 Deaderick Street Nashville, Tennessee 37248-0006 (615) 313-4731	Jan 28, 2007
11-06-06	Nov 16, 2006	0800 Labor and Workforce Development Occupational Safety and Health	Proposed Rules	Amendments	2247	<i>Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry</i> 0800-1-1-.06 Adoption and Citation of Federal Standards 0800-1-1-.07 Exceptions to Adoption of Federal Standards in 29 CFR Part 1910	Michael M. Maenza Labor and Workforce Development Occupational Safety and Health 3rd Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville TN 37243-0659 (615) 741-7036	March 30, 2007
				2248	<i>Chapter 0800-1-6 Occupational Safety and Health Standards for Construction</i> 0800-1-6-.02 Adoption and Citation of Federal Standards			
				2249	<i>Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture</i> 0800-1-7-.01 Adoption and Citation of Federal Standards 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928			

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID #	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-08-06	Nov 20, 2006	0800 Labor and Workforce Development Boiler and Elevator Inspection Board of Boiler Rules	Proposed Rules	Amendments	2250	<i>Chapter 0800-3-3 Boiler Inspections</i> 0800-3-3-.09 Fees	Martin Toth Chief Inspector Labor and Workforce Development Andrew Johnson Twr 3rd Fl 710 James Robertson Pkwy Nashville TN 37243 (615) 741-2123	Mar 30, 2007
11-09-06	Nov 20, 2006	1640 TN Student Assistance Corporation	Public Necessity Rules	New Rules	2251	<i>Chapter 1640-1-20 Tennessee Math & Science Teacher Loan Forgiveness Program</i> 1640-01-20-.01 Introduction 1640-01-20-.02 Definitions 1640-01-20-.03 Eligibility 1640-01-20-.04 Award Amount 1640-01-20-.05 Application Process 1640-01-20-.06 Interest 1640-01-20-.07 Repayment 1640-01-20-.08 Deferment 1640-01-20-.09 Cancellation/ Forgiveness 1640-01-20-.10 Leave of Absence 1640-01-20-.11 Appeals Procedure	Thomas R. Bain Compliance and Legal Affairs TSAC Suite 1510 404 James Robertson Pkwy Nashville TN 37243-0820 615-253-7476	Nov 20, 2006 through May 4, 2007
11-10-06	Nov 20, 2006	1640 TN Student Assistance Corporation	Proposed Rules	New Rules		<i>Chapter 1640-1-20 Tennessee Math & Science Teacher Loan Forgiveness Program</i> 1640-01-20-.01 Introduction 1640-01-20-.02 Definitions 1640-01-20-.03 Eligibility 1640-01-20-.04 Award Amount 1640-01-20-.05 Application Process 1640-01-20-.06 Interest 1640-01-20-.07 Repayment 1640-01-20-.08 Deferment 1640-01-20-.09 Cancellation/ Forgiveness 1640-01-20-.10 Leave of Absence 1640-01-20-.11 Appeals Procedure	Thomas R. Bain Compliance and Legal Affairs TSAC Suite 1510 404 James Robertson Pkwy Nashville TN 37243-0820 615-253-7476	Mar 30, 2007
11-11-06	Nov 27, 2006	0080 Agriculture Division of Regulatory Services	Emergency Rules	Amendments	2073	<i>Chapter 0080-5-12 Kerosene And Motor Fuels Quality Inspection Regulations</i> 0080-5-12-.03 Classification And Method Of Sale Of Petroleum Products	Phyllis Childs Agriculture P. O. Box 40627 Nashville, Tn 37204 615-837-5280	Nov 27, 2006 through April 10, 2007

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID #	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-12-06	Nov 27, 2006	1640 Student Assistance Corporation TSAC	Proposed Rules	Repeals	1845	<i>Chapter 1640-1-5</i> <i>Bylaws Of The Tennessee Student Assistance Corporation</i>	Thomas R. Bain Compliance and Legal Affairs TSAC Suite 1510 404 James Robertson Pkwy Nashville TN 37243-0820 615-253-7476	March 30, 2007
11-14-06	Nov 27, 2006	0400 Environment and Conservation Division of 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 41-503	Robert L. Powell Remediation 4th Fl Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Feb 10, 2007
11-15-06	Nov 27, 2006	0400 Environment and Conservation Division of 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 82-544	Robert L. Powell Remediation 4th Fl Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Feb 10, 2007
11-16-06	Nov 27, 2006	0400 Environment and Conservation Division of 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 86-506	Robert L. Powell Remediation 4th Fl Annex L & C Bldg Nashville TN 37243-1538 (615)532-0916	Feb 10, 2007
11-17-06	Nov 27, 2006	0400 Environment and Conservation Division of Remediation	Rulemaking Hearing Rules	Amendments		<i>Chapter 1200-1-17</i> <i>Drycleaner Environmental Response Program</i> 1200-1-17-.02 Definitions 1200-1-17-.03 Registration, Fees and Surcharges, Certificate Issuance 1200-1-17-.04 Best Management Practices 1200-1-17-.05 Program Qualifications And Procedures For The Tennessee Drycleaner Environmental Response Program 1200-1-17-.06 Withdrawing An Applicant's Grant Of Approval	Steve Goins Remediation Environment And Conservation 4th Fl L&C Annex 401 Church St Nashville TN 37243-1538 (615) 532-8599	Feb 10, 2007

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID #	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-17-06, cont.						1200-1-17-.08 Administrative Guidelines For The Tennessee Drycleaner Environmental Response Fund 1200-1-17-.09 Contractors		
11-30-06	Nov 30, 2006	1640 Student Assistance Corporation	Public Necessity Rules	Amendments	2254	<i>Chapter 1640-1-19 Tennessee Education Lottery Scholarship Program</i> 1640-1-19-.01 Definitions 1640-1-19-.02 Scholarship Award Amounts and Classifications 1640-1-19.04 General Eligibility 1640-1-19-.05 Eligibility – Tennessee HOPE Scholarship 1640-1-19-.06 Eligibility – Tennessee ASPIRE Award 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship 1640-1-19-.08 Eligibility – Tennessee Hope Access Grant 1640-1-19-.09 Eligibility – Tennessee Hope Foster Child Grant 1640-1-19-.11 Eligibility – Tennessee Dual Enrollment Grant 1640-1-19-.12 Retention of Awards – General Requirements 1640-1-19-.22 Calculation of Postsecondary Cumulative Grade Point Average 1640-1-19-.23 Transfer Students 1640-1-19-.26 Appeal and Exception Process	Thomas R. Bain TSAC Suite 1510 404 James Robertson Pkwy Nashville TN 37243-0820 615-253-7476	Nov 30, through May 14, 2007

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	ID #	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
11-31-06	Nov 30, 2006	1640 Student Assistance Corporation	Proposed Rules	Amendments		<i>Chapter 1640-1-19 Tennessee Education Lottery Scholarship Program</i> 1640-1-19-.01 Definitions 1640-1-19-.02 Scholarship Award Amounts and Classifications 1640-1-19.04 General Eligibility 1640-1-19-.05 Eligibility – Tennessee HOPE Scholarship 1640-1-19-.06 Eligibility – Tennessee ASPIRE Award 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship 1640-1-19-.08 Eligibility – Tennessee Hope Access Grant 1640-1-19-.09 Eligibility – Tennessee Hope Foster Child Grant 1640-1-19-.11 Eligibility – Tennessee Dual Enrollment Grant 1640-1-19-.12 Retention of Awards – General Requirements 1640-1-19-.22 Calculation of Postsecondary Cumulative Grade Point Average 1640-1-19-.23 Transfer Students 1640-1-19-.26 Appeal and Exception Process	Thomas R. Bain TSAC Suite 1510 404 James Robertson Pkwy Nashville TN 37243-0820 615-253-7476	March 30, 2007

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.tennessee.gov/hsda/health_plan_agency_meet.html for the latest Notice of Beginning of Review Cycle.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

For text of emergency rules filed prior to September, see T.A.R. cited,
<http://www.state.tn.us/sos/pub/tar/index.htm>

or

visit the Department of State's website,
http://www.state.tn.us/sos/rules/emergency/emer_index.htm

- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency rules dealing with the labeling requirements for biodiesel and biodiesel blends conveyed for consumption in Tennessee-chapter 0080-5-12 Kerosene and Motor Fuels Quality Inspection Regulations, September 2006 T.A.R., Volume 32, number 10. - Filed November 27, 2006, 2006; effective through May 11, 2007. (11-11-06)
- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency rules dealing with the protection of the small ruminant industry from the threat of Scrapie - chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, September 2006 T.A.R., Volume 32, number 10. - Filed August 30, 2006; effective through February 11, 2007. (08-43-06)
- 0800 - Department of Labor - Division of Workers' Compensation - Emergency Rules amending the medical fee schedule and related system, Chapter 0800-2-18 Medical Fee Schedule, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed October 10, 2006; effective through March 24, 2007. (10-07-06)
- 0800 - Department of Labor - Division of Workers' Compensation - Emergency Rule amending 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges), Chapter 0800-2-18 Medical Fee Schedule, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed October 10, 2006; effective through March 24, 2007. (10-06-06)

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF REGULATORY SERVICES

CHAPTER 0080-5-12 KEROSENE AND MOTOR FUELS QUALITY INSPECTION REGULATIONS

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. §4-5-208, the Department of Agriculture is promulgating emergency rules that will amend Chapter 0080-5-12 Kerosene and Motor Fuels Quality Inspection Regulations covering labeling requirements for biodiesel and biodiesel blends conveyed for consumption in Tennessee. The emergency rules are necessary because of the growing demand for biodiesel and biodiesel blends by consumers and the need to ensure that those products are accurately identified and labeled on fueling dispensers. Previous labeling requirements were taken from model recommendations of the National Conference on Weights and Measures (NCWM). However, we have determined that those NCWM recommendations have conflicting requirements; therefore, we are seeking to establish requirements that are clearly enforceable.

The Tennessee Department of Agriculture has concluded that there is an emergency creating a threat to public safety and welfare as biodiesel and biodiesel blends are continuing to rapidly enter into the marketplace. Therefore, absent any emergency rule, there will be no governmental oversight protecting consumers and industry from misidentified and mislabeled products entering into commerce in Tennessee. The lack of these rules would be injurious to consumer's vehicles and to businesses that may unknowingly receive and pass on products that are not suitable for use in diesel engines.

For copies of the entire text of the proposed amendments, contact: Jimmy Hopper, Director, Regulatory Services Division, Department of Agriculture, Ellington Agricultural Center, 615-837-5150.

AMENDMENTS

The text of the proposed amendments is as follows:

Rule 0080-5-12-.03 Classification and Method of Sale of Petroleum Products is amended by adding language in a new paragraph (12) and subparagraphs to the current language so that, as amended, the rule shall read:

- (12) Biodiesel
 - (a) Identification of Product – Biodiesel blends containing more than 5% by volume shall be identified by the term Biodiesel Blend.
 - (b) Labeling of Dispensers Containing more than Five Percent (5%) and Up to Twenty Percent (20%) Biodiesel – Each dispenser of biodiesel blends containing more than 5% and up to and including 20% shall be labeled with either the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with “Biodiesel Blend”. (Examples: B10 Biodiesel Blend; B20 Biodiesel Blend), or the phrase “Biodiesel Blend between 5 % and 20 %” or similar words.
 - (c) Documentation for Dispenser Labeling Purposes - The retailer shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is

EMERGENCY RULES

for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

Authority: T.C.A. §47-18-1304 and §47-18-1309.

All emergency rules set out herein were properly filed in the Department of State on the 27th day of November, 2006, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 10th day of April, 2007. (11-11-06)

PROPOSED RULES

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

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

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

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

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

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

The text of the proposed amendments is as follows:

AMENDMENTS

Paragraph (2) of Rule 0800-1-1-.06 Adoption and Citation of Federal Standards is amended by changing the date in the second line from "July 1, 2006" to "January 1, 2007", so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2007 except as provided in Rule 0800-1-1-.07 of this chapter.

PROPOSED RULES

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

Paragraph (3) of Rule 0800-1-1-.07 Exceptions to Adoption of Federal Standards in 29 CFR Part 1910 is amended by replacing the number “0” with the number “4170” in the TWA mg/m³ column of the table entry for “1,1,2,2-Tetrachloro-1,2-difluoroethane, CAS No. 76-12-0”, so that as amended the entry shall read:

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

Substance	CAS No.	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m ³	ppm	mg/m ³	ppm	mg/m ³	
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—	—	—	—	—

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

Paragraph (2) of Rule 0800-1-6-.02 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “July 1, 2006” to “January 1, 2007”, so that as amended the paragraph shall read:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of January 1, 2007 except as provided in Rule 0800-1-6-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Paragraph (2) of Rule 0800-1-7-.01 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “July 1, 2006” to “January 1, 2007”, so that as amended the paragraph shall read:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of January 1, 2007 except as provided in Rule 0800-1-7-.02 of this chapter.

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

Paragraph (1) of Rule 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from “July 1, 2006” to “January 1, 2007”, so that as amended the paragraph shall read:

(1) As of January 1, 2007, there are no exceptions.

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

PROPOSED RULES

The proposed rules set out herein were properly filed in the Department of State on the 16th day of November, 2006, 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 30th day of March, 2007. (11-06-07)

PROPOSED RULES

**TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800
DIVISION OF BOILER AND ELEVATOR INSPECTION
BOARD OF BOILER RULES**

**CHAPTER 0800-3-3
BOILER INSPECTIONS**

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Boiler and Elevator Inspection, Board of Boiler Rules, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Division of the Department of Labor and Workforce Development, Andrew Johnson Tower, 2nd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243, and in the Administrative Procedures Division of the Department of State, William R. Snodgrass Tennessee Tower, 8th Floor, 312 8th Avenue North, Nashville, Tennessee, 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact Mr. Gary Cookston, Director, Division of Boiler and Elevator Inspection, Tennessee Department of Labor and Workforce Development, Andrew Johnson Tower, 3rd Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0663, telephone: (615) 532-1929.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 0800-3-3-.09 Fees is amended by deleting the rule in its entirety and substituting the following language, so that as amended the rule shall read:

0800-3-3-.09 FEES.

- (1) For shop inspections of boilers and pressure vessels and for manufacturers and contractors of boilers and pressure vessels quality control system reviews:
 - (a) For one-half (½) day minimum \$250.00
 - (b) For one (1) full day maximum \$500.00
- (2) For special boiler and pressure vessel inspections and second-hand inspections:
 - (a) For one-half (½) day minimum \$250.00
 - (b) For one (1) full day maximum \$500.00
- (3) Boilers Inspection Fees (Fired Vessels):
 - (a) Boilers of 5 H.P. or less, or 50 sq. ft. or less of heating surface \$35.00

PROPOSED RULES

(b)	Boilers over 5 H.P. or over 50 sq. ft. of heating surface	\$35.00
(c)	External inspections	\$25.00
(4)	Boiler Inspection Fees (unfired vessels):	
(a)	Internal and/or external inspection of each unfired pressure vessel subject to inspection having a cross-sectional area of fifty (50) square feet or less is	\$20.00
	For each additional one hundred (100) square feet or fraction thereof, of area in excess of fifty (50) square feet is	\$6.00
	Not more than eighty-one dollars (\$81.00) shall be paid per day for the actual inspection time of each inspector on any one (1) vessel.	
(5)	Examination fee (non-refundable)	\$100.00
(6)	Certificate of Competency fee (non-refundable)	\$50.00
(7)	Identification card fee (non-refundable) Annual renewal	\$25.00
(8)	Inspection certificates fees:	
(a)	For power boilers	\$30.00
(b)	For low pressure heating boilers and unfired pressure vessels	\$45.00
(9)	License fee:	
(a)	Original license (first year)	\$50.00
(b)	Annual renewal license	\$30.00
(10)	For special inspection fee, based on the number of working days notice of inspection:	
(a)	1 – 10 Working Days; For one-half (1/2) day minimum	\$250.00
	For one (1) day maximum	\$500.00
(b)	11 – 20 Workings Days; For one-half (1/2) day minimum	\$100.00
	For one (1) day maximum	\$200.00
(c)	21 – 30 Working Days; For one-half (1/2) day minimum	\$50.00
	For one (1) day maximum	\$100.00
(d)	More than 30 Working Days; For one-half (1/2) day minimum	\$35.00
	For one (1) day maximum	\$70.00

PROPOSED RULES

Authority: T.C.A. §§ 4-5- 202(a)(3), 68-122-101 through 68-122-104, 68-122-106, 68-122-111, 68-122-113, and 68-122-116.

The proposed rules set out herein were properly filed in the Department of State on the 20th day of November, 2007, 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 30th day of March, 2007. (11-08-06)

PROPOSED RULES

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

CHAPTER 1640-1-5 BYLAWS OF THE TENNESSEE STUDENT ASSISTANCE CORPORATION

Presented herein are proposed rules of the Tennessee Student Assistance Corporation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, and in the Department of State, 8th Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the entire text of these proposed rules, contact: Thomas R. Bain, Associate Executive Director for Compliance and Legal Affairs, Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, 615-253-7476.

The text of the proposed rules is as follows:

REPEALS

Rule 1640-1-5 Bylaws of the Tennessee Student Assistance Corporation is repealed in its entirety.

Authority: T.C.A. §§49-4-201 and 49-4-204.

The proposed rules set out herein were properly filed in the Department of State on the 27th day of day of November, 2006, 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 30th day of March, 2007. (11-12-06)

PROPOSED RULES

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

CHAPTER 1640-1-19

TENNESSEE EDUCATIONAL LOTTERY SCHOLARSHIP PROGRAM

Presented herein are proposed amendments of the Tennessee Student Assistance Corporation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, and in the Department of State, 8th Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the 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 copies of the entire text of the proposed amendments, contact: Thomas R. Bain, Associate Executive Director for Compliance and Legal Affairs, Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, 615-253-7476.

The text of the proposed amendments is as follows:

AMENDMENTS

Subparagraph (d) of paragraph (17) of rule 1640-1-19-.01 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the subparagraph shall read:

- (17) (d) An out-of-state public secondary school located in a county bordering Tennessee that Tennessee residents are authorized to attend under T.C.A. § 49-6-3108, anything in rule 1640-1-19.05 (11) to the contrary notwithstanding; or

Authority: T.C.A. §§49-4-201, 49-4-902, 49-4-924 and 2006 Tenn. Pub. Acts Ch. 869.

Paragraph (48) of rule 1640-1-19-.01 Definitions is amended by deleting the word “public” within the text so that as amended the paragraph shall read:

- (48) Tennessee HOPE Foster Child Tuition Grant: A grant in addition to the Tennessee HOPE Scholarship to a foster child to only be used towards the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible postsecondary institution the student attends.

Authority: T.C.A. §§49-4-201, 49-4-902, 49-4-924 and 2006 Tenn. Pub. Acts Ch. 869.

Paragraph (55) of rule 1640-1-19-.01 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (55) Weighted Grade Point Average: Grade point average on a 4.0 scale calculated with additional quality points added to the unweighted grade point average for advanced placement,

PROPOSED RULES

honors, and dual enrollment courses and other similar courses as those courses are defined by the high school.

Authority: T.C.A. §§49-4-201, 49-4-902, 49-4-924 and 2006 Tenn. Pub. Acts Ch. 869.

Paragraph (2) of Rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and adding the following language so that as amended the paragraph shall read:

- (2) Award levels for a full-time student in the 2006-2007 academic year are as follows:
- (a) Tennessee HOPE Scholarship:
 - 1. One thousand nine hundred dollars (\$1,900) per semester, maximum three thousand eight hundred dollars (\$3,800) at four year institutions; and
 - 2. Nine-hundred fifty dollars (\$950) per semester, maximum one thousand nine hundred dollars (\$1,900) at two year institutions.
 - (b) Tennessee ASPIRE Award:
 - 1. Seven hundred fifty dollars (\$750) supplement to base award per semester, maximum one thousand five hundred dollars (\$1,500).
 - (c) General Assembly Merit Scholarship:
 - 1. Five hundred dollars (\$500) supplement to base award per semester, maximum one thousand dollars (\$1,000).
 - (d) Tennessee HOPE Access Grant (one half each of the Tennessee HOPE Scholarship and ASPIRE Award):
 - 1. One thousand three hundred twenty-five dollars (\$1,325) per semester, maximum two thousand six hundred fifty dollars (\$2,650) at four year institutions; and
 - 2. Eight hundred fifty dollars (\$850) per semester, maximum one thousand seven hundred dollars (\$1,700) at two year institutions.
 - (e) Wilder-Naifeh Technical Skills Grant:
 - 1. One thousand five hundred dollars (\$1,500) maximum at Tennessee Technology Centers.
 - (f) Tennessee Dual Enrollment Grant:
 - 1. One hundred dollars (\$100) per semester hour (or equivalent contact hours at technology centers) for a maximum award of three hundred dollars (\$300) per semester and six hundred dollars \$600 per academic year.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

PROPOSED RULES

Paragraph (3) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by adding "T.C.A." within the text so that as amended the paragraph shall read:

- (3) Award amounts for subsequent years shall be determined in accordance with T.C.A. §4 -51-111 and shall be set in the general appropriations act.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Paragraph (4) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (4) Recipients of any TELS award as provided by these rules, except for the Tennessee Dual Enrollment Grant described in Rule 1640-1-19-.11 and the Wilder-Naifeh Technical Skills Grant described in Rule 1640-1-19-.10, may enroll as a full-time or part-time student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Paragraph (5) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (5) Except for approved medical or personal leaves of absence as provided in Rule 1640-1-19-.20 or emergency military duty as provided in Rule 1640-1-19-.21, award recipients must be continuously enrolled and maintain satisfactory academic progress at an eligible postsecondary institution.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Paragraph (8) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (8) The receipt of a Tennessee HOPE Scholarship, Tennessee HOPE Access Grant, Tennessee ASPIRE Award, Tennessee HOPE Foster Child Grant, General Assembly Merit Scholarship or Tennessee Dual Enrollment Grant is contingent upon admission and enrollment at an eligible postsecondary institution. Academically qualifying for any of these awards program does not guarantee admission to an eligible postsecondary institution.

Rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by adding the following language as paragraph (9) so that as amended the rule shall read:

- (9) Tennessee HOPE Foster Child Tuition Grant amounts shall be specified in Rule 1640-1-19-.09.

PROPOSED RULES

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Rule 1640-1-19.04 General Eligibility is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) To be eligible for a TELS award a student shall:
 - (a) Be a Tennessee citizen; and
 - (b) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of September 1 of the academic year of enrollment in an eligible postsecondary institution; students enrolling in a Tennessee Technology Center must be a Tennessee resident one year prior to date of term enrollment; and
 - (c) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-1-19-.03, and
 - (d) Be admitted to an eligible postsecondary institution; and
 - (e) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student; and
 - (f) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and
 - (g) Meet each qualification relating to the relevant TELS award and applicable to the student; and
 - (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and
 - (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
 - (j) Not be incarcerated.

Authority: T.C.A. §§49-4-201, 49-4-904, 49-4-905, and 49-4-924.

Rule 1640-1-19-.05 Eligibility – Tennessee HOPE Scholarship is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) This paragraph applies to student eligibility requirements as amended effective July 1, 2007. To be eligible for a Tennessee HOPE Scholarship as an entering freshman, a student, who graduated from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall:
 - (a) Meet the requirements of §§49-4-904 and 49-4-905; and

PROPOSED RULES

- (b) Be admitted to and enroll in an eligible postsecondary institution no later than sixteen (16) months after graduation from high school; and
 - (c) Achieve a final overall weighted high school grade point average of at least 3.0; or
 - (d) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.
- (2) This paragraph applies to student HOPE Scholarship eligibility as an entering freshman for students graduating from an eligible high school, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements after December 1, 2004, but prior to postsecondary enrollment as of June 30, 2007. To be eligible for the HOPE award, the student must:
- (a) Meet the general eligibility requirements of Rule 1640-1-19-.04; and
 - (b) No later than 16 months following completion of the respective high school requirements:
 - 1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and
 - 2. Enroll in an eligible postsecondary institution; and
 - 3. Satisfy one of the following requirements:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - (ii) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution; or
 - (iii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution.
- (3) This paragraph applies to student HOPE Scholarship eligibility as an entering freshman for students graduating from an eligible high school after December 1, 2003, but prior to December 1, 2004. To be eligible for the HOPE award, the student must:
- (a) Meet the general requirements of Rule 1640-1-19-.04; and
 - (b) Apply for a Tennessee HOPE Scholarship as provided in Rule 1640-1-19-.03; and
 - (c) Enroll in an eligible postsecondary institution; and
 - (d) Satisfy one of the following requirements:
 - 1. Achieve a final overall unweighted high school grade point average of at least 3.0; or

PROPOSED RULES

2. Attain a composite ACT score of at least 19 on any single ACT test date, or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.
- (4) This paragraph, effective as of December 1, 2004, applies to student HOPE Scholarship eligibility as an entering freshman for students completing a Tennessee home school program, obtaining a GED, graduating from a Tennessee high school that is not an eligible high school, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements. To be eligible for the HOPE award, the student must:
- (a) Meet the general eligibility requirements of Rule 1640-1-19-.04; and
 - (b) No later than 16 months following completion of the respective high school requirements:
 1. Apply for a Tennessee HOPE Scholarship as provided in Rule 1640-1-19-.03; and
 2. Enroll in an eligible postsecondary institution; and
 3. Satisfy one of the following requirements:
 - (i) Attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution, if such student completed high school in a Tennessee home school program or graduated from a high school located in Tennessee that is not an eligible high school; or
 - (ii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a post secondary institution.
- (5) This paragraph applies to student HOPE Scholarship eligibility as an entering freshman for students completing high school after January 1, 2003, but prior to December 1, 2003. HOPE award eligibility requirements for various student subgroups are as follows:
- (a) Students graduating from an eligible high school shall, no later than the fall semester immediately following graduation, be required to:
 1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and
 2. Enroll in an eligible postsecondary institution; and
 3. Satisfy one of the following requirements:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.

PROPOSED RULES

- (b) Students completing high school in a Tennessee home school program, graduating from a high school located in Tennessee that is not an eligible high school, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements shall, no later than the fall semester immediately following graduation, completion of the home school program, or the last class taken toward high school requirements shall be required to:
 - 1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and
 - 2. Enroll in an eligible postsecondary institution; and
 - 3. Satisfy one of the following requirements:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single test date taken prior to enrolling in a postsecondary institution.
- (c) Students obtaining a GED shall pass the GED tests with an average score of at least 525 and shall, no later than the fall semester immediately following obtaining a GED, be required to:
 - 1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and
 - 2. Enroll in an eligible postsecondary institution; and
 - 3. Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.
- (d) All students meeting the requirements of subparagraph (5)(a), (b), or (c) of this rule, shall also meet each of the following criteria:
 - 1. Attend an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year without a Tennessee HOPE Scholarship and complete at least twenty-four (24) semester hours at such institution with a cumulative grade point average of 2.75; and
 - 2. Maintain satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the postsecondary institution in which the student enrolled.
- (6) Students entering active duty in the United States Armed Services within two years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program or obtaining a GED, and otherwise meets the criteria outlined in this rule may apply for a TELS award if the student:

PROPOSED RULES

- (a) Applies within seven years of the student's date of entry into military service, or within one year of the student's honorable discharge from military service, whichever comes first; and
 - (b) After graduation from high school, did not attend a postsecondary institution prior to entering military service.
- (7) This paragraph shall apply to a student who is the dependent child of a military parent or the dependent child of a full-time religious worker.
- (a) Students who are a Tennessee citizen and a dependent child of a military parent may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this subparagraph.
 - 1. Such students may be eligible if they meet all eligibility requirements for a HOPE Scholarship except that:
 - (i) While the parent is a military parent, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 - (ii) The student did not graduate from an eligible high school as defined in rule 1640-1-19-.01(17), an ineligible high school, a Tennessee home school or obtain a GED.
 - 2. Students who graduated from a high school outside of Tennessee may nevertheless be eligible if the high school was:
 - (i) Operated by the United States; or
 - (ii) Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 - (iii) Accredited by an accrediting association recognized by the foreign nation in which the school is located.
 - 3. Students graduating from high schools outside Tennessee who do not meet the requirements of part 2. of subparagraph (a) may still be eligible for the HOPE Scholarship if they completed high school in a home school program or obtained a GED.
 - 4. For purposes of this subparagraph (a), the following definitions apply:
 - (i) "Dependent child" means a natural or adopted child or stepchild whom a military parent claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another state or nation only while the military parent is engaged in active military service, on full-time national guard duty, or actively employed by the U.S. Department of Defense.
 - (ii) "Military parent" means a parent of a dependent child who is:

PROPOSED RULES

- (I) A member of the armed forces engaged in active U.S. military service and stationed on active duty outside Tennessee; or
 - (II) A member of the Tennessee National Guard engaged in active U.S. military service and stationed on active duty outside Tennessee; or
 - (III) A full-time civilian employee of the Department of Defense working outside Tennessee.
- (iii) "Tennessee National Guard" means any federally recognized unit of the Tennessee Army or Air National Guard.
5. Subparagraph (a) shall only apply to:
- (i) Dependent children of members of the armed forces or Tennessee National Guard whose home of record, at the time of entry into military service, is Tennessee; and
 - (ii) Dependent children of full-time civilian employees of the U.S. Department of Defense, who are Tennessee residents.
- (b) A student who is a Tennessee citizen and a dependent child of a full-time religious worker may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this subparagraph.
1. Such student must meet all HOPE Scholarship eligibility requirements except that:
- (i) While the student's parent is serving in another nation as a religious worker, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 - (ii) The student did not graduate from an eligible high school as defined in rule 1640-1-19-.01(17), an ineligible high school, a Tennessee home school or obtain a GED.
2. To be eligible for the HOPE Scholarship under this subparagraph (b), the student must:
- (i) Graduate from a high school in the foreign nation where the student's parent is a religious worker that is accredited by a regional accrediting association as defined by § 49-4-902(24) and meet the academic eligibility requirements of § 49-4-907(3); or
 - (ii) Complete high school in a home school in the foreign nation where the student's parent is a religious worker and meet the academic requirements of § 49-4-908(2)(A).
3. As used in this subparagraph (b):

PROPOSED RULES

- (i) "Dependent child" means a natural or adopted child or stepchild whom the parent, who is a religious worker, claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another nation only while the parent is actively engaged in full-time religious work; and
 - (ii) "Religious worker" means a person sent to another country by a church, religious denomination or other religious organization to spread its faith or to do social or medical work.
4. Subparagraph (b) only applies to dependent children of religious workers who are engaged in full-time religious work in another nation for more than one (1) year and who were Tennessee residents before leaving the U.S. to do religious work and intend to return to Tennessee upon completion of their assignment as a religious worker.
- (8) Beginning with the Fall 2005 semester a non-traditional student who is an entering freshman, as those terms are defined in these rules, may become eligible for a Tennessee HOPE Scholarship. In addition to the general eligibility requirements of Rule 1640-1-19-.04, the non-traditional student must have an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000) and attend an eligible postsecondary institution as a full- or part-time student, as those terms are defined in these rules, and attempt at least twenty-four (24) semester hours. If the student achieves a 2.75 grade point average at the end of the semester in which twenty-four (24) hours are attempted, the student shall be eligible for a Tennessee HOPE Scholarship in subsequent semesters if the following additional requirements are met:
- (a) Applies for the Tennessee HOPE Scholarship as provided in Rule 1649-1-19-.03;
 - (b) Has an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000);
 - (c) Is continuously enrolled in an eligible postsecondary institution as a full- or part-time student, as those terms are defined in these rules;
 - (d) Meets the applicable retention requirements of Rule 1640-1-19-.12; and
 - (e) Maintains satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs at the postsecondary institution attended.
- (9) A non-traditional student who does not meet the grade point average requirement of paragraph (8) of this rule, shall be eligible for a Tennessee HOPE Scholarship if the student achieves a cumulative grade point average of at least 3.0 at the end of any semester in which eligibility is reviewed under Rule 1640-1-19-.12, provided the student continues to meet the provisions of paragraph (8)(a), (b), (c), and (e) of this rule.
- (10) A non-traditional student shall not be eligible for either the ASPIRE Award or the General Assembly Merit Scholarship award.
- (11) HOPE Scholarship eligibility for students graduating from a high school located in a neighboring state in a county contiguous to Tennessee is as follows:

PROPOSED RULES

- (a) Students are eligible for a Tennessee HOPE Scholarship as an entering freshman notwithstanding the provisions of T.C.A. §49-4-905(b)(2), if the student:
1. Is a citizen of Tennessee; and
 2. Has been a Tennessee resident, as defined by the Tennessee Board of Regents regulations promulgated under §49-8-104, for one (1) year immediately preceding the date of graduation from high school, and remains a Tennessee resident between graduation from high school and enrollment in an eligible postsecondary institution; and
 3. Is not ineligible for the scholarship under §49-4-904; and
 4. Attains a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date; and
 5. Applies for a Tennessee HOPE Scholarship; and
 6. Is admitted to and enrolls in an eligible postsecondary institution no later than sixteen (16) months after graduating from high school.
- (b) Students who are eligible for a HOPE Scholarship under Rule 1640-1-19-.05(11)(a) shall not be eligible for a General Assembly Merit Scholarship.
- (c) Such students, if they chose to attend a regionally accredited postsecondary institution located outside of Tennessee without a HOPE Scholarship, may be eligible for a HOPE Scholarship as a transfer student. However, the student must meet all requirements of T.C.A. §49-4-929 other than any requirements pertaining to the type of high school from which the student graduated.
- (d) This rule, 1640-1-19-.05(11) shall not be interpreted to make an out-of-state public secondary school located in a county bordering Tennessee that Tennessee residents are authorized to attend under T.C.A. §49-6-3108, an ineligible high school.

Authority: T.C.A. §§49-4-201, 49-4-905, 49-4-907, 49-4-908, 49-4-909, 49-4-910, 49-4-918, 49-4-924, 49-4-926, 2005 Tenn. Pub. Acts ch. 481, §§2-11, 13, 18-21, 26 and 30 and 2006 Tenn. Pub. Acts ch. 974, §§4-6.

Rule 1640-1-19-.06 Eligibility – Tennessee ASPIRE Award is amended by deleting the citation “1640-1-19-.05(9)” in the body of the text and substituting “1640-1-19-.05(10)” so that as amended the rule shall read:

Except as provided in 1640-1-19-.05(10), any student eligible for the Tennessee HOPE Scholarship with an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000) will receive ASPIRE Award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the ASPIRE Award. Notwithstanding the provisions of Rule 1640-1-19-.12 to the contrary, a student otherwise eligible for the Tennessee HOPE Scholarship and meeting the requirements of this rule shall receive the ASPIRE Award regardless of the student’s eligibility for this grant in any prior year. A student eligible for both the ASPIRE Award and the General Assembly Merit Scholarship shall be awarded the ASPIRE Award, but shall not simultaneously receive both awards.

PROPOSED RULES

Authority: T.C.A. §§49-4-201, 49-4-915, 49-4-917, 49-4-924, and 2005 Tenn. Pub. Acts ch. 481, §29.

Rule 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship is amended by adding the following language as paragraph (4) so that as amended the rule shall read:

- (4) A student eligible for a Tennessee HOPE Scholarship under Rule 1640-1-19-.05(11) shall not be eligible for a General Assembly Merit Scholar supplemental award under §49-4-916.

Authority: T.C.A. §§49-4-201, 49-4-916, 49-4-917, 49-4-924 and 2006 Tenn. Pub. Acts ch. 974, §6.

Paragraph (1) of Rule 1640-1-19-.08 Eligibility – Tennessee Hope Access Grant is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE Access Grant a student shall:
 - (a) Have an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000);
 - (b) Apply for a Tennessee HOPE Access Grant as provided in Rule 1640-1-19-.03;
 - (c) Graduate from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation;
 - (d) Achieve a final overall unweighted high school grade point average of at least 2.75;
 - (e) Attain a composite ACT score of at least 18 on any single ACT test date or a combined SAT score of at least 860 on any single SAT test date taken prior to enrolling in a postsecondary institution; and
 - (f) Be admitted to and enroll in an eligible postsecondary institution no later than sixteen (16) months after graduation from high school.

Authority: T.C.A. §§49-4-201, 49-4-920 and 49-4-924.

Rule 1640-1-19-.09 Eligibility – Tennessee Hope Foster Child Grant is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04 and the applicable eligibility requirements of the Tennessee HOPE Scholarship and the Tennessee HOPE Access Grant, to be eligible for a Tennessee HOPE Foster Child Grant, a student shall present the Corporation with official certification from the Department of Children's Services that the student meets the eligibility requirement for the tuition grant.

PROPOSED RULES

- (2) Applicants shall apply for all available financial aid, including grants, scholarships, loans, work-study, and funds provided through the Federal Foster Care Independence Act of 1999 (Chafee Education and Training Voucher).
- (3) The amount of the grant shall equal the Cost of Attendance less all other student financial assistance from all sources, subject to the following limitations:
 - (a) At a public postsecondary institution, the grant shall not exceed the cost of tuition and mandatory fees.
 - (b) At an independent postsecondary institution, the grant shall not exceed the statewide weighted average cost of tuition and mandatory fees applicable at a 2-year or 4-year public postsecondary institution.
- (4) Subject to meeting retention standards provided by these rules for a TELS award, the student shall be eligible for the Tennessee HOPE Foster Child Tuition Grant:
 - (a) For a period of no more than four (4) years after the date of graduation from high school or equivalent; and
 - (b) For a period of six (6) years after admittance to an eligible postsecondary institution, if, except as provided by Rule 1640-1-19-.20 or 1640-1-19-.21, the student maintains satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is currently enrolled.
- (5) Nothing in these rules shall be construed to guarantee acceptance by, or entrance into, any eligible postsecondary institution for youth in, or formerly in, the custody of the state or limit the participation of a youth in, or formerly in, the custody of the state in any other program of financial assistance for postsecondary education.

Authority: *T.C.A. §§49-4-201, 49-4-924, 2005 Tenn. Pub. Acts ch. 481, §33 and 2006 Tenn. Pub. Acts ch. 869, §2.*

Paragraph (1) of Rule 1640-1-19-.11 Eligibility – Tennessee Dual Enrollment Grant is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (1) To be eligible for a Tennessee Dual Enrollment grant a student shall:
 - (a) Be a Tennessee citizen; and
 - (b) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of September 1 of the academic year of enrollment in an eligible postsecondary institution; students enrolling in a Tennessee Technology Center must be a Tennessee resident one year prior to date of term enrollment; and
 - (c) Be admitted to an eligible postsecondary institution; and
 - (d) Not be incarcerated.

PROPOSED RULES

Authority: T.C.A. §§49-4-201, 49-4-924 and 2005 Tenn. Pub. Acts ch. 481.

Paragraph (7) of rule 1640-1-19-.12 Retention of Awards – General Requirements is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (7) The provisions of paragraph (6) of this rule shall also apply to any student who:
 - (a) Completed high school requirements after December 1, 2003, who, for whatever reason, did not receive a TELS award, notwithstanding the fact that the student met the applicable initial eligibility requirements of Rule 1640-1-19-.05 (2), (3), or (4); or
 - (b) Completed high school requirements after January 1, 2003 and prior to December 1, 2003, who completed at least twenty-four (24) semester hours during the 2003-2004 academic year with a cumulative grade point average under 2.75, but met all other applicable initial eligibility requirements of Rule 1640-1-19-.05(5), and is otherwise eligible for the award.

Authority: T.C.A. §§49-4-201, 49-4-909, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921, 49-4-924, and 2005 Tenn. Pub. Acts ch. 481.

Subparagraph (a) of paragraph (2) of rule 1640-1-19-.22 Calculation of Postsecondary Cumulative Grade Point Average is amended by deleting the current language in its entirety and substituting the following language so that as amended the subparagraph shall read:

- (2) (a) A student shall have a one time option to repeat one course and utilize only the higher of the two grades in the calculation of their postsecondary grade point average for purposes of determining continued eligibility for a TELS award. The semester hours for both attempted courses, however, will be included in the one hundred twenty (120) semester hours limitation.

Paragraph (3) of rule 1640-1-19-.22 Calculation of Postsecondary Cumulative Grade Point Average is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (3) Credit hours attempted prior to high school graduation, completion of a home school program in Tennessee or GED attainment, including those attempted with the Tennessee dual enrollment grant, do not count toward the limitation on semester hours provided in Rule 1640-1-19-.12(3), nor are the grades for those classes included in the postsecondary cumulative grade point average.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-924, and 2005 Tenn. Pub. Acts ch. 481.

Rule 1640-1-19-.23 Transfer Students is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) A TELS recipient transferring from an eligible postsecondary institution to another is eligible for a TELS award if all eligibility requirements continue to be met at the postsecondary institution at which the student is currently enrolled.

PROPOSED RULES

- (2) Any student who was otherwise eligible for a TELS award upon completion of high school requirements based on the applicable provisions of these rules, but who enrolled in a regionally accredited out-of-state postsecondary institution may transfer to an eligible Tennessee postsecondary institution and receive a TELS awards. Any such student must meet the following:
 - (a) Maintain continuous enrollment and satisfactory academic progress; and
 - (b) If enrolled full-time at the beginning of a semester, student must not drop to part-time enrollment within that semester; or
 - (c) If enrolled part-time at the beginning of a semester, student must not drop to less than part-time enrollment within that semester.
- (3) Any student who was initially eligible for a Tennessee HOPE Scholarship or HOPE Access Grant but who instead of enrolling at either an eligible 2-year or 4-year postsecondary institution enrolled at a Tennessee Technology Center and obtained the Wilder-Naifeh Technical Skills Grant and completed a diploma program is eligible for a HOPE Scholarship at either an eligible 2-year or 4-year postsecondary institution. The student must apply for a HOPE Scholarship within three (3) years of completing the diploma program.
- (4) Hours taken by a student at a Tennessee Technology Center towards a diploma shall not count under the provisions of § 49-4-913 or § 49-4-920 as semester hours attempted for the purposes of calculating the number of semester hours for which a student may receive a Tennessee HOPE Scholarship, General Assembly Merit Scholarship or Tennessee HOPE Access Grant.

Authority: *T.C.A. §49-4-201, 49-4-910, 49-4-911, 49-4-924, 2005 Tenn. Pub. Acts ch. 481, §14 and 2006 Tenn. Pub. Acts ch. 980.*

Paragraph (1) of rule 1640-1-19-.26 Appeal and Exception Process is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of hearing appeals from decisions denying or revoking applicants' TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a hearing and shall make such determination no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a hearing is required the IRP shall hear the appeal no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision and reasons for the decision. The IRP shall provide a copy of the written decision to the appellant as soon as practicable. For the purposes of this rule, it will

PROPOSED RULES

be presumed that the decision was delivered to the appellant two calendar days after the decision was placed in the U.S. Postal Service addressed to the appellant's official mailing address according to the eligible postsecondary institution's records.

Authority: *T.C.A. §§49-4-201 and 49-4-924.*

Paragraph (2) of rule 1640-1-19-.26 Appeal and Exception Process is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (2) The Appeals Panel shall be appointed by the Corporation's Executive Director for purpose of hearing appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal as well as all pertinent information related to the appeal, with the Corporation within forty-five (45) calendar days from the date that the decision was delivered to the student. A complete record of the institutional IRP hearing shall be provided to the Corporation by the student. The Appeals Panel may award or reinstate the student's TELS award without a hearing. This decision shall be made no later than 30 calendar days after an appeal is properly filed and the record from the IRP hearing is received. If the Appeals Panel determines that a hearing is required, it shall provide the appellant with notice of the hearing date, and such notice shall include the time and location of the hearing. The Appeals Panel shall hear the appeal no later than forty-five (45) calendar days after the appeal is properly filed, unless an extension is requested by the appellant and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than fourteen (14) calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant and the appellant's home institution as soon as practicable. The Appeals Panel is the final administrative appeal.

Authority: *T.C.A. §49-4-201 and 49-4-924.*

The proposed rules set out herein were properly filed in the Department of State on the 30th day of November, 2006, 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 30th day of March, 2007. (11-31-06)

PROPOSED RULES

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

CHAPTER 1640-1-20

TENNESSEE MATH & SCIENCE TEACHER LOAN FORGIVENESS PROGRAM

Presented herein are proposed rules of the Tennessee Student Assistance Corporation submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Student Assistance Corporation to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, and in the Department of State, 8th Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Thomas R. Bain, Associate Executive Director for Compliance and Legal Affairs, Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, 615-253-7476.

The text of the proposed rules is as follows:

NEW RULES

TABLE OF CONTENTS

1640-1-20-.01	Introduction
1640-1-20-.02	Definitions
1640-1-20-.03	Eligibility
1640-1-20-.04	Award Amount
1640-1-20-.05	Application Process
1640-1-20-.06	Interest
1640-1-20-.07	Repayment
1640-1-20-.08	Deferment
1640-1-20-.09	Cancellation/Forgiveness
1640-1-20-.10	Leave of Absence
1640-1-20-.11	Appeals Procedure

1640-1-20-.01 INTRODUCTION.

- (1) These rules implement the Tennessee Math & Science Teacher Loan Forgiveness Program authorized in T.C.A. Title 49, Chapter 4, Part 9 as amended by 2006 Public Acts, Chapter 977 (hereinafter called the Act). The Act makes provision for loans and loan forgiveness to Tennessee tenured public school teachers seeking an advanced degree in math or science, or a certification to teach math or science. Loan forgiveness requires employment in a Tennessee public school system upon completion of the program.
- (2) While the Act refers to the program as the “HOPE Teacher’s Scholarship,” the Corporation interprets the Act as establishing a loan forgiveness program because the Act requires the recipient to sign a promissory note that stipulates a repayment obligation under certain

PROPOSED RULES

circumstances. In order to avoid confusion, the working title of the program shall be the "Tennessee Math & Science Teacher Loan Forgiveness Program."

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.02 DEFINITIONS.

- (1) As used in these rules (Chapter 1640-1-20)
 - (a) "Advanced Degree" means a master's degree, a doctorate, or other degree conferred by an eligible postsecondary institution upon completion of a unified program of study at the graduate level.
 - (b) "Corporation" means the Tennessee Student Assistance Corporation.
 - (c) "Eligible Postsecondary Institution" means an eligible independent postsecondary institution or an eligible public postsecondary institution.
 - (d) "Eligible Independent Postsecondary Institution" means
 1. An institution created by testamentary trust for which the state acts by statute as trustee and for which the governor is authorized to appoint commissioners with the advice and consent of the senate and that offers courses leading to undergraduate degrees; or
 2. A Southern Association of Colleges and Schools accredited private postsecondary institution that is located in Tennessee; or
 3. A private, four-year postsecondary institution that:
 - (i) Has been chartered in Tennessee as a not-for-profit entity for at least thirty (30) consecutive years;
 - (ii) Has had its primary campus domiciled in Tennessee for at least thirty (30) consecutive years;
 - (iii) Is accredited by an accrediting agency that is recognized by the United States Department of Education and the Council on Higher Education Accreditation;
 - (iv) Awards baccalaureate degrees; and
 - (v) As of May 1, 2005, has an articulation agreement with an institution of the state university and community college system or the University of Tennessee system.
 - (e) "Eligible Public Postsecondary Institution" means:
 1. An institution operated by the Tennessee Board of Regents of the state university and community college system; or
 2. An institution in the University of Tennessee system.

PROPOSED RULES

- (f) “Grace period” means the three (3) month period of time which begins when the borrower either completes his or her eligible academic program or no longer meets the Math & Science Teacher Loan Forgiveness Program eligibility requirements, and during which period of time repayment is not required.
- (g) “Loan forgiveness” means the partial or complete cancellation of a Math & Science Teacher Loan, as described elsewhere in these rules.
- (h) “Math & Science Teacher Loan” means the scholarship referenced in T.C.A., Title 49, chapter 4, Part 9 in 2006 Public Acts, Chapter 977, §1 at (a)(6).
- (i) “Program Administrator” means the staff member of the Corporation who has been assigned administrative responsibility for the Math & Science Teacher Loan Forgiveness Program by the Corporation’s Executive Director.
- (j) “Satisfactory Academic Progress” means a standard of progress toward completion of the eligible academic program during which the student meets minimum academic requirements and progresses towards an advanced degree or teacher certification as required by the eligible postsecondary institution.
- (k) “Science” means the study of biology, botany, chemistry, physics, zoology, geology, and other natural and physical sciences.
- (l) “Teacher certificate” means a certificate to indicate the holder’s qualification to teach math or science in a public school system.
- (m) “Year of continuous full-time employment” means 9 to 12 months of continuous full-time employment.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.03 ELIGIBILITY.

- (1) In order to receive a Math & Science Teacher Loan, a student must:
 - (a) Be a citizen of the United States; and
 - (b) Be a citizen of Tennessee; and
 - (c) Be a resident of Tennessee, as defined by regulations promulgated by the Tennessee Board of Regents for the state university and community college system, under the authority of T.C.A. §49-8-104 where applicable for one (1) year immediately preceding the date of application; and
 - (d) Be a tenured teacher teaching in a Tennessee public school system; and
 - (e) Comply with the United States selective service system requirement for registration, as such requirements are applicable to the student; and

PROPOSED RULES

- (f) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and
 - (g) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and
 - (h) Not be incarcerated; and
 - (i) Be admitted to and attend an eligible postsecondary institution seeking an advanced degree in math or a science or certification to teach math or a science; and
 - (j) Agree to teach math or a science in a Tennessee public school system two (2) academic years for each year funded provided by this program and sign a promissory note that stipulates the cash repayment obligation incurred if the teaching service is not fulfilled; and
 - (k) Maintain satisfactory academic progress in the teacher's program of study with no minimum number of hours required per semester; and
 - (l) Complete the program of study within five (5) years beginning with the first term for which loan was funded; and
 - (m) Not allow a break in enrollment at an eligible postsecondary institution of more than twelve (12) months. If the break in enrollment exceeds twelve (12) months, the student enters the grace period followed by repayment, unless the student has received an approved leave of absence.
- (2) Funding received from the Math & Science Teacher Loan Forgiveness Program shall not be used in pursuit of courses taken for re-certification in an area for which certification was previously obtained.
- (3) A borrower who completes the program of study for which a Math & Science Teacher Loan was provided and who subsequently satisfies the terms of the loan in full, either through repayment or cancellation, is not prevented from participating in the Tennessee Math & Science Teacher Loan Forgiveness Program again, in order to gain certification or an advanced degree in a different area of math or science.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.04 AWARD AMOUNT.

- (1) Subject to the amounts appropriated by the general assembly and any provision of law relating to a shortfall in funds available for postsecondary financial assistance from the net proceeds of the state lottery, a Math & Science Teacher Loan to a Tennessee public school teacher shall be two thousand dollars (\$2,000) per academic year, regardless of the number of terms enrolled within that academic year. The total amount of a Math & Science Teacher Loan to a Tennessee public school teacher shall not exceed ten thousand dollars (\$10,000) for all years required for the teacher's program of study.
- (2) The Corporation shall disburse Math & Science Teacher Loan funds directly to eligible postsecondary institutions, which shall in turn credit the borrower's account or disburse funds to eligible borrowers with one credit or payment at the beginning of each academic term attended.

PROPOSED RULES

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.05 APPLICATION PROCESS.

- (1) Tennessee tenured public school teachers shall submit to the Corporation an application and Promissory Note for a Math & Science Teacher Loan for each academic year of post-secondary enrollment.
- (2) The application deadline is September 1 for students beginning the academic year in the fall, February 1 for students who begin the academic year in the spring, and May 1 for students who begin the academic year in the summer.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.06 INTEREST.

Interest shall not be charged for a Math & Science Teacher Loan.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.07 REPAYMENT.

- (1) The Math & Science Teacher Loan must be repaid unless cancelled as described elsewhere in these rules. Repayment will include the full amount of the loan received.
- (2) Repayment shall begin at the end of the grace period, and shall be in monthly installments over a period of no more than eight (8) years, provided that payments must be a minimum of one hundred dollars (\$100) per month.
- (3) The Math & Science Teacher Loan may be prepaid in whole or part at any time without penalty.
- (4) If the borrower of a Math or Science Teacher Loan is determined to have received the award based on inaccurate application information, the full amount of the loan becomes due immediately.
- (5) If the borrower fails to complete an enrollment period for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. If the borrower withdraws after the refund period is over, the postsecondary institution must follow the Return of Title IV guidelines, if applicable, to calculate any return of the Math & Science Teacher Loan.
- (6) If a borrower issues a check, draft, warrant, or electronic funds transfer, which is subsequently returned to the Corporation due to insufficient funds, a stop payment order by the issuer, or any other reason, the payment to which these funds was applied shall be reversed on the borrower's account. Additionally, the Corporation may charge a reasonable service fee for such a transaction.

PROPOSED RULES

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.08 DEFERMENT.

- (1) Repayment shall be deferred while the borrower is employed as a math or science teacher in a Tennessee public school system.
- (2) In order for repayment to be deferred, borrowers shall provide employment verification as a math or science public school teacher required by the Corporation.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.09 CANCELLATION/FORGIVENESS.

- (1) For each year of continuous full-time employment as a math or a science teacher in a Tennessee Public School System, the borrower shall receive a credit of fifty percent (50%) of one year's loan amount. Cancellation credit will be applied at the end of each year and upon receipt of verification of such service. Cancellation credit cannot be earned prior to completion of the advanced degree or certification program.
- (2) In order to receive cancellation credit, the borrower shall provide employment verification as required by the Corporation.
- (3) Cancellation credit shall not begin until the borrower completes the program of study for which the loan was provided.
- (4) The debt shall be cancelled on the basis of conclusive evidence that the borrower has died or has been totally and permanently disabled and cannot perform the teaching obligation outlined in the regulations. The borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to the loan application. If, at any time subsequent to an initial determination of disability, the borrower's condition improves to the point where a total and permanent disability no longer exists, the Corporation may reinstate any outstanding debt previously cancelled.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.10 LEAVE OF ABSENCE.

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving the Math & Science Teacher Loan upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. Allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, a military obligation of the student or family member, to fulfill a religious commitment expected of all individuals of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. In the event an institution denies a student's request for

PROPOSED RULES

a medical or personal leave of absence, the student may seek relief from the decision in accordance with Rule 1640-1-20-.11.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.11 APPEALS PROCEDURE.

- (1) Generally, the ruling of the Corporation's program administrator shall apply.
- (2) An individual who believes that the ruling of the program administrator was not in accordance with the published regulations and the Act may appeal to the authority of the Corporation's Appeals Panel for relief.
- (3) An individual who believes that the ruling of the Corporation's Appeals Panel was not in accordance with the published regulation and the Act may appeal to the authority of the Corporation's Board of Director's Appeal Committee. This is the final administrative remedy.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

The proposed rules set out herein were properly filed in the Department of State on the 20th day of November, 2006, 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 30th day of March, 2007. (11-10-06)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

For text of public necessity rules filed prior to November 2006 see T.A.R. cited at
<http://www.tennessee.gov/sos/pub/tar/index.htm>

or

the Department of State's website at
http://www.state.tn.us/sos/rules/necessity/nec_index.htm

- 0580 - Ethics Commission - Public Necessity Rules regulating lobbyists and employers of lobbyists, chapter 0580-1 Rules Pertaining to Lobbyists and Employers of Lobbyist, 9 T.A.R. (September 2006) - Filed August 9, 2006; effective through January 21, 2007. (08-08-06)
- 1680 - Department of Transportation - Environmental Division - Public Necessity Rules establishing requirements that the States must meet in order to assure that there is effective control of outdoor advertising, chapter 1680-2-3 Control of Outdoor Advertising, 9 T.A.R. (September 2006) Filed August 1, 2006; effective October 1, 2006 through March 15, 2007. (08-01-06)

PUBLIC NECESSITY RULES

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to T.C.A. §49-4-924, the Tennessee Student Assistance Corporation (TSAC) is authorized to promulgate public necessity rules to implement the Tennessee Education Lottery Scholarship Program (TELS Program). These rules are being promulgated as public necessity rules to implement statutory changes to the TELS Program required by Chapters 869, 974 and 980 of the 2006 Tennessee Public Acts and to implement other technical changes to the Program deemed necessary by TSAC. Effective implementation of these rules precludes the use of other rulemaking procedures described in Tennessee Code Annotated, Title 4, Chapter 5 for the promulgation of permanent rules.

For a copy of the entire text of the public necessity rules, contact: Thomas R. Bain, Associate Executive Director for Compliance and Legal Affairs, Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, 615-253-7476.

Robert W. Ruble
Executive Director
Tennessee Student Assistance Corporation

PUBLIC NECESSITY RULES OF THE TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-1-19 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM

The text of the proposed public necessity rules is as follows:

AMENDMENTS

Subparagraph (d) of paragraph (17) of rule 1640-1-19-.01 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the subparagraph shall read:

- (17) (d) An out-of-state public secondary school located in a county bordering Tennessee that Tennessee residents are authorized to attend under T.C.A. § 49-6-3108, anything in rule 1640-1-19.05 (11) to the contrary notwithstanding; or

Authority: T.C.A. §§49-4-201, 49-4-902, 49-4-924 and 2006 Tenn. Pub. Acts Ch. 869.

Paragraph (48) of rule 1640-1-19-.01 Definitions is amended by deleting the word “public” within the text so that as amended the paragraph shall read:

- (48) Tennessee HOPE Foster Child Tuition Grant: A grant in addition to the Tennessee HOPE Scholarship to a foster child to only be used towards the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible postsecondary institution the student attends.

PUBLIC NECESSITY RULES

Authority: T.C.A. §§49-4-201, 49-4-902, 49-4-924 and 2006 Tenn. Pub. Acts Ch. 869.

Paragraph (55) of rule 1640-1-19-.01 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (55) Weighted Grade Point Average: Grade point average on a 4.0 scale calculated with additional quality points added to the unweighted grade point average for advanced placement, honors, and dual enrollment courses and other similar courses as those courses are defined by the high school.

Authority: T.C.A. §§49-4-201, 49-4-902, 49-4-924 and 2006 Tenn. Pub. Acts Ch. 869.

Paragraph (2) of Rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and adding the following language so that as amended the paragraph shall read:

- (2) Award levels for a full-time student in the 2006-2007 academic year are as follows:
- (a) Tennessee HOPE Scholarship:
 - 1. One thousand nine hundred dollars (\$1,900) per semester, maximum three thousand eight hundred dollars (\$3,800) at four year institutions; and
 - 2. Nine-hundred fifty dollars (\$950) per semester, maximum one thousand nine hundred dollars (\$1,900) at two year institutions.
 - (b) Tennessee ASPIRE Award:
 - 1. Seven hundred fifty dollars (\$750) supplement to base award per semester, maximum one thousand five hundred dollars (\$1,500).
 - (c) General Assembly Merit Scholarship:
 - 1. Five hundred dollars (\$500) supplement to base award per semester, maximum one thousand dollars (\$1,000).
 - (d) Tennessee HOPE Access Grant (one half each of the Tennessee HOPE Scholarship and ASPIRE Award):
 - 1. One thousand three hundred twenty-five dollars (\$1,325) per semester, maximum two thousand six hundred fifty dollars (\$2,650) at four year institutions; and
 - 2. Eight hundred fifty dollars (\$850) per semester, maximum one thousand seven hundred dollars (\$1,700) at two year institutions.
 - (e) Wilder-Naifeh Technical Skills Grant:
 - 1. One thousand five hundred dollars (\$1,500) maximum at Tennessee Technology Centers.

PUBLIC NECESSITY RULES

(f) Tennessee Dual Enrollment Grant:

1. One hundred dollars (\$100) per semester hour (or equivalent contact hours at technology centers) for a maximum award of three hundred dollars (\$300) per semester and six hundred dollars \$600 per academic year.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Paragraph (3) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by adding "T.C.A." within the text so that as amended the paragraph shall read:

- (3) Award amounts for subsequent years shall be determined in accordance with T.C.A. §4 -51-111 and shall be set in the general appropriations act.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Paragraph (4) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (4) Recipients of any TELS award as provided by these rules, except for the Tennessee Dual Enrollment Grant described in Rule 1640-1-19-.11 and the Wilder-Naifeh Technical Skills Grant described in Rule 1640-1-19-.10, may enroll as a full-time or part-time student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Paragraph (5) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (5) Except for approved medical or personal leaves of absence as provided in Rule 1640-1-19-.20 or emergency military duty as provided in Rule 1640-1-19-.21, award recipients must be continuously enrolled and maintain satisfactory academic progress at an eligible postsecondary institution.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Paragraph (8) of rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (8) The receipt of a Tennessee HOPE Scholarship, Tennessee HOPE Access Grant, Tennessee ASPIRE Award, Tennessee HOPE Foster Child Grant, General Assembly Merit Scholarship or Tennessee Dual Enrollment Grant is contingent upon admission and enrollment at an eligible

PUBLIC NECESSITY RULES

postsecondary institution. Academically qualifying for any of these awards program does not guarantee admission to an eligible postsecondary institution.

Rule 1640-1-19-.02 Scholarship Award Amounts and Classifications is amended by adding the following language as paragraph (9) so that as amended the rule shall read:

- (9) Tennessee HOPE Foster Child Tuition Grant amounts shall be specified in Rule 1640-1-19-.09.

Authority: T.C.A. §§49-4-201, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924 and 2006 Tenn. Pub. Acts ch. 869, 974.

Rule 1640-1-19.04 General Eligibility is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) To be eligible for a TELS award a student shall:
- (a) Be a Tennessee citizen; and
 - (b) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of September 1 of the academic year of enrollment in an eligible postsecondary institution; students enrolling in a Tennessee Technology Center must be a Tennessee resident one year prior to date of term enrollment; and
 - (c) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-1-19-.03, and
 - (d) Be admitted to an eligible postsecondary institution; and
 - (e) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student; and
 - (f) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and
 - (g) Meet each qualification relating to the relevant TELS award and applicable to the student; and
 - (h) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and
 - (i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and
 - (j) Not be incarcerated.

Authority: T.C.A. §§49-4-201, 49-4-904, 49-4-905, and 49-4-924.

PUBLIC NECESSITY RULES

Rule 1640-1-19-.05 Eligibility – Tennessee HOPE Scholarship is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) This paragraph applies to student eligibility requirements as amended effective July 1, 2007. To be eligible for a Tennessee HOPE Scholarship as an entering freshman, a student, who graduated from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall:
 - (a) Meet the requirements of §§49-4-904 and 49-4-905; and
 - (b) Be admitted to and enroll in an eligible postsecondary institution no later than sixteen (16) months after graduation from high school; and
 - (c) Achieve a final overall weighted high school grade point average of at least 3.0; or
 - (d) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date.

- (2) This paragraph applies to student HOPE Scholarship eligibility as an entering freshman for students graduating from an eligible high school, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements after December 1, 2004, but prior to postsecondary enrollment as of June 30, 2007. To be eligible for the HOPE award, the student must:
 - (a) Meet the general eligibility requirements of Rule 1640-1-19-.04; and
 - (b) No later than 16 months following completion of the respective high school requirements:
 1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and
 2. Enroll in an eligible postsecondary institution; and
 3. Satisfy one of the following requirements:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - (ii) Attain a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution; or
 - (iii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution.

- (3) This paragraph applies to student HOPE Scholarship eligibility as an entering freshman for students graduating from an eligible high school after December 1, 2003, but prior to December 1, 2004. To be eligible for the HOPE award, the student must:
 - (a) Meet the general requirements of Rule 1640-1-19-.04; and

PUBLIC NECESSITY RULES

- (b) Apply for a Tennessee HOPE Scholarship as provided in Rule 1640-1-19-.03; and
 - (c) Enroll in an eligible postsecondary institution; and
 - (d) Satisfy one of the following requirements:
 - 1. Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - 2. Attain a composite ACT score of at least 19 on any single ACT test date, or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.
- (4) This paragraph, effective as of December 1, 2004, applies to student HOPE Scholarship eligibility as an entering freshman for students completing a Tennessee home school program, obtaining a GED, graduating from a Tennessee high school that is not an eligible high school, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements. To be eligible for the HOPE award, the student must:
- (a) Meet the general eligibility requirements of Rule 1640-1-19-.04; and
 - (b) No later than 16 months following completion of the respective high school requirements:
 - 1. Apply for a Tennessee HOPE Scholarship as provided in Rule 1640-1-19-.03; and
 - 2. Enroll in an eligible postsecondary institution; and
 - 3. Satisfy one of the following requirements:
 - (i) Attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a postsecondary institution, if such student completed high school in a Tennessee home school program or graduated from a high school located in Tennessee that is not an eligible high school; or
 - (ii) Pass the GED tests with an average score of at least 525, and attain a composite ACT score of at least 21 on any single ACT test date, or a combined SAT score of at least 980 on any single SAT test date taken prior to enrolling in a post secondary institution.
- (5) This paragraph applies to student HOPE Scholarship eligibility as an entering freshman for students completing high school after January 1, 2003, but prior to December 1, 2003. HOPE award eligibility requirements for various student subgroups are as follows:
- (a) Students graduating from an eligible high school shall, no later than the fall semester immediately following graduation, be required to:
 - 1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and

PUBLIC NECESSITY RULES

2. Enroll in an eligible postsecondary institution; and
 3. Satisfy one of the following requirements:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.
- (b) Students completing high school in a Tennessee home school program, graduating from a high school located in Tennessee that is not an eligible high school, or choosing to seek enrollment in a postsecondary institution in lieu of completing high school requirements shall, no later than the fall semester immediately following graduation, completion of the home school program, or the last class taken toward high school requirements shall be required to:
1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and
 2. Enroll in an eligible postsecondary institution; and
 3. Satisfy one of the following requirements:
 - (i) Achieve a final overall unweighted high school grade point average of at least 3.0; or
 - (ii) Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single test date taken prior to enrolling in a postsecondary institution.
- (c) Students obtaining a GED shall pass the GED tests with an average score of at least 525 and shall, no later than the fall semester immediately following obtaining a GED, be required to:
1. Apply for a Tennessee HOPE Scholarship as provided by Rule 1640-1-19-.03; and
 2. Enroll in an eligible postsecondary institution; and
 3. Attain a composite ACT score of at least 19 on any single ACT test date or a combined SAT score of at least 890 on any single SAT test date taken prior to enrolling in a postsecondary institution.
- (d) All students meeting the requirements of subparagraph (5)(a), (b), or (c) of this rule, shall also meet each of the following criteria:
1. Attend an eligible postsecondary institution or a postsecondary institution located outside of Tennessee that is accredited by a regional accrediting association during the 2003-2004 academic year without a Tennessee HOPE Scholarship and complete at least twenty-four (24) semester hours at such institution with a cumulative grade point average of 2.75; and

PUBLIC NECESSITY RULES

2. Maintain satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs by the postsecondary institution in which the student enrolled.
- (6) Students entering active duty in the United States Armed Services within two years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program or obtaining a GED, and otherwise meets the criteria outlined in this rule may apply for a TELS award if the student:
- (a) Applies within seven years of the student's date of entry into military service, or within one year of the student's honorable discharge from military service, whichever comes first; and
 - (b) After graduation from high school, did not attend a postsecondary institution prior to entering military service.
- (7) This paragraph shall apply to a student who is the dependent child of a military parent or the dependent child of a full-time religious worker.
- (a) Students who are a Tennessee citizen and a dependent child of a military parent may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this subparagraph.
 1. Such students may be eligible if they meet all eligibility requirements for a HOPE Scholarship except that:
 - (i) While the parent is a military parent, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 - (ii) The student did not graduate from an eligible high school as defined in rule 1640-1-19-.01(17), an ineligible high school, a Tennessee home school or obtain a GED.
 2. Students who graduated from a high school outside of Tennessee may nevertheless be eligible if the high school was:
 - (i) Operated by the United States; or
 - (ii) Accredited by the appropriate regional accrediting association for the state in which the school is located; or
 - (iii) Accredited by an accrediting association recognized by the foreign nation in which the school is located.
 3. Students graduating from high schools outside Tennessee who do not meet the requirements of part 2. of subparagraph (a) may still be eligible for the HOPE Scholarship if they completed high school in a home school program or obtained a GED.

PUBLIC NECESSITY RULES

4. For purposes of this subparagraph (a), the following definitions apply:
 - (i) “Dependent child” means a natural or adopted child or stepchild whom a military parent claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another state or nation only while the military parent is engaged in active military service, on full-time national guard duty, or actively employed by the U.S. Department of Defense.
 - (ii) “Military parent” means a parent of a dependent child who is:
 - (I) A member of the armed forces engaged in active U.S. military service and stationed on active duty outside Tennessee; or
 - (II) A member of the Tennessee National Guard engaged in active U.S. military service and stationed on active duty outside Tennessee; or
 - (III) A full-time civilian employee of the Department of Defense working outside Tennessee.
 - (iii) “Tennessee National Guard” means any federally recognized unit of the Tennessee Army or Air National Guard.
 5. Subparagraph (a) shall only apply to:
 - (i) Dependent children of members of the armed forces or Tennessee National Guard whose home of record, at the time of entry into military service, is Tennessee; and
 - (ii) Dependent children of full-time civilian employees of the U.S. Department of Defense, who are Tennessee residents.
- (b) A student who is a Tennessee citizen and a dependent child of a full-time religious worker may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this subparagraph.
1. Such student must meet all HOPE Scholarship eligibility requirements except that:
 - (i) While the student’s parent is serving in another nation as a religious worker, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and
 - (ii) The student did not graduate from an eligible high school as defined in rule 1640-1-19-.01(17), an ineligible high school, a Tennessee home school or obtain a GED.
 2. To be eligible for the HOPE Scholarship under this subparagraph (b), the student must:
 - (i) Graduate from a high school in the foreign nation where the student’s parent is a religious worker that is accredited by a regional accrediting association as

PUBLIC NECESSITY RULES

defined by § 49-4-902(24) and meet the academic eligibility requirements of § 49-4-907(3); or

- (ii) Complete high school in a home school in the foreign nation where the student's parent is a religious worker and meet the academic requirements of § 49-4-908(2)(A).

3. As used in this subparagraph (b):

- (i) "Dependent child" means a natural or adopted child or stepchild whom the parent, who is a religious worker, claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another nation only while the parent is actively engaged in full-time religious work; and
- (ii) "Religious worker" means a person sent to another country by a church, religious denomination or other religious organization to spread its faith or to do social or medical work.

4. Subparagraph (b) only applies to dependent children of religious workers who are engaged in full-time religious work in another nation for more than one (1) year and who were Tennessee residents before leaving the U.S. to do religious work and intend to return to Tennessee upon completion of their assignment as a religious worker.

- (8) Beginning with the Fall 2005 semester a non-traditional student who is an entering freshman, as those terms are defined in these rules, may become eligible for a Tennessee HOPE Scholarship. In addition to the general eligibility requirements of Rule 1640-1-19-.04, the non-traditional student must have an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000) and attend an eligible postsecondary institution as a full- or part-time student, as those terms are defined in these rules, and attempt at least twenty-four (24) semester hours. If the student achieves a 2.75 grade point average at the end of the semester in which twenty-four (24) hours are attempted, the student shall be eligible for a Tennessee HOPE Scholarship in subsequent semesters if the following additional requirements are met:

- (a) Applies for the Tennessee HOPE Scholarship as provided in Rule 1649-1-19-.03;
- (b) Has an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000);
- (c) Is continuously enrolled in an eligible postsecondary institution as a full- or part-time student, as those terms are defined in these rules;
- (d) Meets the applicable retention requirements of Rule 1640-1-19-.12; and
- (e) Maintains satisfactory progress in a course of study in accordance with the standards and practices used for federal Title IV programs at the postsecondary institution attended.

- (9) A non-traditional student who does not meet the grade point average requirement of paragraph (8) of this rule, shall be eligible for a Tennessee HOPE Scholarship if the student achieves a cumulative grade point average of at least 3.0 at the end of any semester in which eligibility is

PUBLIC NECESSITY RULES

reviewed under Rule 1640-1-19-.12, provided the student continues to meet the provisions of paragraph (8)(a), (b), (c), and (e) of this rule.

- (10) A non-traditional student shall not be eligible for either the ASPIRE Award or the General Assembly Merit Scholarship award.
- (11) HOPE Scholarship eligibility for students graduating from a high school located in a neighboring state in a county contiguous to Tennessee is as follows:
 - (a) Students are eligible for a Tennessee HOPE Scholarship as an entering freshman notwithstanding the provisions of T.C.A. §49-4-905(b)(2), if the student:
 1. Is a citizen of Tennessee; and
 2. Has been a Tennessee resident, as defined by the Tennessee Board of Regents regulations promulgated under §49-8-104, for one (1) year immediately preceding the date of graduation from high school, and remains a Tennessee resident between graduation from high school and enrollment in an eligible postsecondary institution; and
 3. Is not ineligible for the scholarship under §49-4-904; and
 4. Attains a composite ACT score of at least 21 on any single ACT test date or a combined SAT score of at least 980 on any single SAT test date; and
 5. Applies for a Tennessee HOPE Scholarship; and
 6. Is admitted to and enrolls in an eligible postsecondary institution no later than sixteen (16) months after graduating from high school.
 - (b) Students who are eligible for a HOPE Scholarship under Rule 1640-1-19-.05(11)(a) shall not be eligible for a General Assembly Merit Scholarship.
 - (c) Such students, if they chose to attend a regionally accredited postsecondary institution located outside of Tennessee without a HOPE Scholarship, may be eligible for a HOPE Scholarship as a transfer student. However, the student must meet all requirements of T.C.A. §49-4-929 other than any requirements pertaining to the type of high school from which the student graduated.
 - (d) This rule, 1640-1-19-.05(11) shall not be interpreted to make an out-of-state public secondary school located in a county bordering Tennessee that Tennessee residents are authorized to attend under T.C.A. §49-6-3108, an ineligible high school.

Authority: T.C.A. §§49-4-201, 49-4-905, 49-4-907, 49-4-908, 49-4-909, 49-4-910, 49-4-918, 49-4-924, 49-4-926, 2005 Tenn. Pub. Acts ch. 481, §§2-11, 13, 18-21, 26 and 30 and 2006 Tenn. Pub. Acts ch. 974, §§4-6.

PUBLIC NECESSITY RULES

Rule 1640-1-19-.06 Eligibility – Tennessee ASPIRE Award is amended by deleting the citation “1640-1-19-.05(9)” in the body of the text and substituting “1640-1-19-.05(10)” so that as amended the rule shall read:

Except as provided in 1640-1-19-.05(10), any student eligible for the Tennessee HOPE Scholarship with an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000) will receive ASPIRE Award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the ASPIRE Award. Notwithstanding the provisions of Rule 1640-1-19-.12 to the contrary, a student otherwise eligible for the Tennessee HOPE Scholarship and meeting the requirements of this rule shall receive the ASPIRE Award regardless of the student’s eligibility for this grant in any prior year. A student eligible for both the ASPIRE Award and the General Assembly Merit Scholarship shall be awarded the ASPIRE Award, but shall not simultaneously receive both awards.

Authority: T.C.A. §§49-4-201, 49-4-915, 49-4-917, 49-4-924, and 2005 Tenn. Pub. Acts ch. 481, §29.

Rule 1640-1-19-.07 Eligibility – General Assembly Merit Scholarship is amended by adding the following language as paragraph (4) so that as amended the rule shall read:

- (4) A student eligible for a Tennessee HOPE Scholarship under Rule 1640-1-19-.05(11) shall not be eligible for a General Assembly Merit Scholar supplemental award under §49-4-916.

Authority: T.C.A. §§49-4-201, 49-4-916, 49-4-917, 49-4-924 and 2006 Tenn. Pub. Acts ch. 974, §6.

Paragraph (1) of Rule 1640-1-19-.08 Eligibility – Tennessee Hope Access Grant is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04, to be eligible for a Tennessee HOPE Access Grant a student shall:
 - (a) Have an adjusted gross income attributable to the student that does not exceed thirty-six thousand dollars (\$36,000);
 - (b) Apply for a Tennessee HOPE Access Grant as provided in Rule 1640-1-19-.03;
 - (c) Graduate from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation;
 - (d) Achieve a final overall unweighted high school grade point average of at least 2.75;
 - (e) Attain a composite ACT score of at least 18 on any single ACT test date or a combined SAT score of at least 860 on any single SAT test date taken prior to enrolling in a postsecondary institution; and
 - (f) Be admitted to and enroll in an eligible postsecondary institution no later than sixteen (16) months after graduation from high school.

PUBLIC NECESSITY RULES

Authority: T.C.A. §§49-4-201, 49-4-920 and 49-4-924.

Rule 1640-1-19-.09 Eligibility – Tennessee Hope Foster Child Grant is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) In addition to the general eligibility requirements in Rule 1640-1-19-.04 and the applicable eligibility requirements of the Tennessee HOPE Scholarship and the Tennessee HOPE Access Grant, to be eligible for a Tennessee HOPE Foster Child Grant, a student shall present the Corporation with official certification from the Department of Children's Services that the student meets the eligibility requirement for the tuition grant.
- (2) Applicants shall apply for all available financial aid, including grants, scholarships, loans, work-study, and funds provided through the Federal Foster Care Independence Act of 1999 (Chafee Education and Training Voucher).
- (3) The amount of the grant shall equal the Cost of Attendance less all other student financial assistance from all sources, subject to the following limitations:
 - (a) At a public postsecondary institution, the grant shall not exceed the cost of tuition and mandatory fees.
 - (b) At an independent postsecondary institution, the grant shall not exceed the statewide weighted average cost of tuition and mandatory fees applicable at a 2-year or 4-year public postsecondary institution.
- (4) Subject to meeting retention standards provided by these rules for a TELS award, the student shall be eligible for the Tennessee HOPE Foster Child Tuition Grant:
 - (a) For a period of no more than four (4) years after the date of graduation from high school or equivalent; and
 - (b) For a period of six (6) years after admittance to an eligible postsecondary institution, if, except as provided by Rule 1640-1-19-.20 or 1640-1-19-.21, the student maintains satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is currently enrolled.
- (5) Nothing in these rules shall be construed to guarantee acceptance by, or entrance into, any eligible postsecondary institution for youth in, or formerly in, the custody of the state or limit the participation of a youth in, or formerly in, the custody of the state in any other program of financial assistance for postsecondary education.

Authority: T.C.A. §§49-4-201, 49-4-924, 2005 Tenn. Pub. Acts ch. 481, §33 and 2006 Tenn. Pub. Acts ch. 869, §2.

Paragraph (1) of Rule 1640-1-19-.11 Eligibility – Tennessee Dual Enrollment Grant is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

PUBLIC NECESSITY RULES

- (1) To be eligible for a Tennessee Dual Enrollment grant a student shall:
 - (a) Be a Tennessee citizen; and
 - (b) Be a Tennessee resident, as defined by Chapter 0240-2-2, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of September 1 of the academic year of enrollment in an eligible postsecondary institution; students enrolling in a Tennessee Technology Center must be a Tennessee resident one year prior to date of term enrollment; and
 - (c) Be admitted to an eligible postsecondary institution; and
 - (d) Not be incarcerated.

Authority: T.C.A. §§49-4-201, 49-4-924 and 2005 Tenn. Pub. Acts ch. 481.

Paragraph (7) of rule 1640-1-19-.12 Retention of Awards – General Requirements is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (7) The provisions of paragraph (6) of this rule shall also apply to any student who:
 - (a) Completed high school requirements after December 1, 2003, who, for whatever reason, did not receive a TELS award, notwithstanding the fact that the student met the applicable initial eligibility requirements of Rule 1640-1-19-.05 (2), (3), or (4); or
 - (b) Completed high school requirements after January 1, 2003 and prior to December 1, 2003, who completed at least twenty-four (24) semester hours during the 2003-2004 academic year with a cumulative grade point average under 2.75, but met all other applicable initial eligibility requirements of Rule 1640-1-19-.05(5), and is otherwise eligible for the award.

Authority: T.C.A. §§49-4-201, 49-4-909, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921, 49-4-924, and 2005 Tenn. Pub. Acts ch. 481.

Subparagraph (a) of paragraph (2) of rule 1640-1-19-.22 Calculation of Postsecondary Cumulative Grade Point Average is amended by deleting the current language in its entirety and substituting the following language so that as amended the subparagraph shall read:

- (2) (a) A student shall have a one time option to repeat one course and utilize only the higher of the two grades in the calculation of their postsecondary grade point average for purposes of determining continued eligibility for a TELS award. The semester hours for both attempted courses, however, will be included in the one hundred twenty (120) semester hours limitation.

Paragraph (3) of rule 1640-1-19-.22 Calculation of Postsecondary Cumulative Grade Point Average is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

PUBLIC NECESSITY RULES

- (3) Credit hours attempted prior to high school graduation, completion of a home school program in Tennessee or GED attainment, including those attempted with the Tennessee dual enrollment grant, do not count toward the limitation on semester hours provided in Rule 1640-1-19-.12(3), nor are the grades for those classes included in the postsecondary cumulative grade point average.

Authority: *T.C.A. §§49-4-201, 49-4-903, 49-4-924, and 2005 Tenn. Pub. Acts ch. 481.*

Rule 1640-1-19-.23 Transfer Students is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

- (1) A TELS recipient transferring from an eligible postsecondary institution to another is eligible for a TELS award if all eligibility requirements continue to be met at the postsecondary institution at which the student is currently enrolled.
- (2) Any student who was otherwise eligible for a TELS award upon completion of high school requirements based on the applicable provisions of these rules, but who enrolled in a regionally accredited out-of-state postsecondary institution may transfer to an eligible Tennessee postsecondary institution and receive a TELS awards. Any such student must meet the following:
 - (a) Maintain continuous enrollment and satisfactory academic progress; and
 - (b) If enrolled full-time at the beginning of a semester, student must not drop to part-time enrollment within that semester; or
 - (c) If enrolled part-time at the beginning of a semester, student must not drop to less than part-time enrollment within that semester.
- (3) Any student who was initially eligible for a Tennessee HOPE Scholarship or HOPE Access Grant but who instead of enrolling at either an eligible 2-year or 4-year postsecondary institution enrolled at a Tennessee Technology Center and obtained the Wilder-Naifeh Technical Skills Grant and completed a diploma program is eligible for a HOPE Scholarship at either an eligible 2-year or 4-year postsecondary institution. The student must apply for a HOPE Scholarship within three (3) years of completing the diploma program.
- (4) Hours taken by a student at a Tennessee Technology Center towards a diploma shall not count under the provisions of § 49-4-913 or § 49-4-920 as semester hours attempted for the purposes of calculating the number of semester hours for which a student may receive a Tennessee HOPE Scholarship, General Assembly Merit Scholarship or Tennessee HOPE Access Grant.

Authority: *T.C.A. §49-4-201, 49-4-910, 49-4-911, 49-4-924, 2005 Tenn. Pub. Acts ch. 481, §14 and 2006 Tenn. Pub. Acts ch. 980.*

Paragraph (1) of rule 1640-1-19-.26 Appeal and Exception Process is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of hearing appeals from decisions denying or revoking applicants' TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to

PUBLIC NECESSITY RULES

appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a hearing and shall make such determination no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a hearing is required the IRP shall hear the appeal no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision and reasons for the decision. The IRP shall provide a copy of the written decision to the appellant as soon as practicable. For the purposes of this rule, it will be presumed that the decision was delivered to the appellant two calendar days after the decision was placed in the U.S. Postal Service addressed to the appellant's official mailing address according to the eligible postsecondary institution's records.

Authority: *T.C.A. §§49-4-201 and 49-4-924.*

Paragraph (2) of rule 1640-1-19-.26 Appeal and Exception Process is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (2) The Appeals Panel shall be appointed by the Corporation's Executive Director for purpose of hearing appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal as well as all pertinent information related to the appeal, with the Corporation within forty-five (45) calendar days from the date that the decision was delivered to the student. A complete record of the institutional IRP hearing shall be provided to the Corporation by the student. The Appeals Panel may award or reinstate the student's TELS award without a hearing. This decision shall be made no later than 30 calendar days after an appeal is properly filed and the record from the IRP hearing is received. If the Appeals Panel determines that a hearing is required, it shall provide the appellant with notice of the hearing date, and such notice shall include the time and location of the hearing. The Appeals Panel shall hear the appeal no later than forty-five (45) calendar days after the appeal is properly filed, unless an extension is requested by the appellant and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than fourteen (14) calendar days after hearing an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant and the appellant's home institution as soon as practicable. The Appeals Panel is the final administrative appeal.

PUBLIC NECESSITY RULES

Authority: *T.C.A. §49-4-201 and 49-4-924.*

The public necessity rules set out herein were properly filed in the Department of State on the 30th day of November, 2006, 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 14th day of May, 2007. (11-30-06)

PUBLIC NECESSITY RULES

TENNESSEE STUDENT ASSISTANCE CORPORATION - 1640

**CHAPTER 1640-1-20
TENNESSEE MATH & SCIENCE TEACHER LOAN FORGIVENESS PROGRAM**

STATEMENT OF NECESSITY

Pursuant to T.C.A. §49-4-924, the Tennessee Student Assistance Corporation (TSAC) is authorized to promulgate public necessity rules to implement Tennessee Code Annotated, Title 49, Chapter 4, Part 9, relative to the Tennessee Education Lottery Scholarship Program (TELS Program). These rules are being promulgated as public necessity rules because Chapter 977 of the 2006 Tennessee Public Acts enacted a Math & Science Teacher loan-scholarship (loan forgiveness program) as part of the TELS Program in Tennessee Code Annotated, Title 49, Chapter 4, Part 9. Effective implementation of these rules precludes the use of other rulemaking procedures described in Tennessee Code Annotated, Title 4, Chapter 5 for the promulgation of permanent rules.

For a copy of these public necessity rules, contact: Thomas R. Bain, Associate Executive Director for Compliance and Legal Affairs, Tennessee Student Assistance Corporation, Suite 1510, 404 James Robertson Parkway, Nashville, TN 37243-0820, 615-253-7476.

Robert W. Ruble
Executive Director
Tennessee Student Assistance Corporation

**PUBLIC NECESSITY RULES
OF THE
TENNESSEE STUDENT ASSISTANCE CORPORATION**

**CHAPTER 1640-1-20
TENNESSEE MATH & SCIENCE TEACHER LOAN FORGIVENESS PROGRAM**

The text of the public necessity rules is as follows:

NEW RULES

TABLE OF CONTENTS

1640-1-20-.01	Introduction
1640-1-20-.02	Definitions
1640-1-20-.03	Eligibility
1640-1-20-.04	Award Amount
1640-1-20-.05	Application Process
1640-1-20-.06	Interest
1640-1-20-.07	Repayment
1640-1-20-.08	Deferment
1640-1-20-.09	Cancellation/Forgiveness
1640-1-20-.10	Leave of Absence
1640-1-20-.11	Appeals Procedure

PUBLIC NECESSITY RULES

1640-1-20-.01 INTRODUCTION.

- (1) These rules implement the Tennessee Math & Science Teacher Loan Forgiveness Program authorized in T.C.A. Title 49, Chapter 4, Part 9 as amended by 2006 Public Acts, Chapter 977 (hereinafter called the Act). The Act makes provision for loans and loan forgiveness to Tennessee tenured public school teachers seeking an advanced degree in math or science, or a certification to teach math or science. Loan forgiveness requires employment in a Tennessee public school system upon completion of the program.
- (2) While the Act refers to the program as the “HOPE Teacher’s Scholarship,” the Corporation interprets the Act as establishing a loan forgiveness program because the Act requires the recipient to sign a promissory note that stipulates a repayment obligation under certain circumstances. In order to avoid confusion, the working title of the program shall be the “Tennessee Math & Science Teacher Loan Forgiveness Program.”

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.02 DEFINITIONS.

- (1) As used in these rules (Chapter 1640-1-20)
 - (a) “Advanced Degree” means a master’s degree, a doctorate, or other degree conferred by an eligible postsecondary institution upon completion of a unified program of study at the graduate level.
 - (b) “Corporation” means the Tennessee Student Assistance Corporation.
 - (c) “Eligible Postsecondary Institution” means an eligible independent postsecondary institution or an eligible public postsecondary institution.
 - (d) “Eligible Independent Postsecondary Institution” means
 1. An institution created by testamentary trust for which the state acts by statute as trustee and for which the governor is authorized to appoint commissioners with the advice and consent of the senate and that offers courses leading to undergraduate degrees; or
 2. A Southern Association of Colleges and Schools accredited private postsecondary institution that is located in Tennessee; or
 3. A private, four-year postsecondary institution that:
 - (i) Has been chartered in Tennessee as a not-for-profit entity for at least thirty (30) consecutive years;
 - (ii) Has had its primary campus domiciled in Tennessee for at least thirty (30) consecutive years;
 - (iii) Is accredited by an accrediting agency that is recognized by the United States Department of Education and the Council on Higher Education Accreditation;

PUBLIC NECESSITY RULES

- (iv) Awards baccalaureate degrees; and
 - (v) As of May 1, 2005, has an articulation agreement with an institution of the state university and community college system or the University of Tennessee system.
- (e) “Eligible Public Postsecondary Institution” means:
- 1. An institution operated by the Tennessee Board of Regents of the state university and community college system; or
 - 2. An institution in the University of Tennessee system.
- (f) “Grace period” means the three (3) month period of time which begins when the borrower either completes his or her eligible academic program or no longer meets the Math & Science Teacher Loan Forgiveness Program eligibility requirements, and during which period of time repayment is not required.
- (g) “Loan forgiveness” means the partial or complete cancellation of a Math & Science Teacher Loan, as described elsewhere in these rules.
- (h) “Math & Science Teacher Loan” means the scholarship referenced in T.C.A., Title 49, chapter 4, Part 9 in 2006 Public Acts, Chapter 977, §1 at (a)(6).
- (i) “Program Administrator” means the staff member of the Corporation who has been assigned administrative responsibility for the Math & Science Teacher Loan Forgiveness Program by the Corporation’s Executive Director.
- (j) “Satisfactory Academic Progress” means a standard of progress toward completion of the eligible academic program during which the student meets minimum academic requirements and progresses towards an advanced degree or teacher certification as required by the eligible postsecondary institution.
- (k) “Science” means the study of biology, botany, chemistry, physics, zoology, geology, and other natural and physical sciences.
- (l) “Teacher certificate” means a certificate to indicate the holder’s qualification to teach math or science in a public school system.
- (m) “Year of continuous full-time employment” means 9 to 12 months of continuous full-time employment.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.03 ELIGIBILITY.

- (1) In order to receive a Math & Science Teacher Loan, a student must:
 - (a) Be a citizen of the United States; and

PUBLIC NECESSITY RULES

- (b) Be a citizen of Tennessee; and
 - (c) Be a resident of Tennessee, as defined by regulations promulgated by the Tennessee Board of Regents for the state university and community college system, under the authority of T.C.A. §49-8-104 where applicable for one (1) year immediately preceding the date of application; and
 - (d) Be a tenured teacher teaching in a Tennessee public school system; and
 - (e) Comply with the United States selective service system requirement for registration, as such requirements are applicable to the student; and
 - (f) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and
 - (g) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and
 - (h) Not be incarcerated; and
 - (i) Be admitted to and attend an eligible postsecondary institution seeking an advanced degree in math or a science or certification to teach math or a science; and
 - (j) Agree to teach math or a science in a Tennessee public school system two (2) academic years for each year funded provided by this program and sign a promissory note that stipulates the cash repayment obligation incurred if the teaching service is not fulfilled; and
 - (k) Maintain satisfactory academic progress in the teacher's program of study with no minimum number of hours required per semester; and
 - (l) Complete the program of study within five (5) years beginning with the first term for which loan was funded; and
 - (m) Not allow a break in enrollment at an eligible postsecondary institution of more than twelve (12) months. If the break in enrollment exceeds twelve (12) months, the student enters the grace period followed by repayment, unless the student has received an approved leave of absence.
- (2) Funding received from the Math & Science Teacher Loan Forgiveness Program shall not be used in pursuit of courses taken for re-certification in an area for which certification was previously obtained.
- (3) A borrower who completes the program of study for which a Math & Science Teacher Loan was provided and who subsequently satisfies the terms of the loan in full, either through repayment or cancellation, is not prevented from participating in the Tennessee Math & Science Teacher Loan Forgiveness Program again, in order to gain certification or an advanced degree in a different area of math or science.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

PUBLIC NECESSITY RULES

1640-1-20-.04 AWARD AMOUNT.

- (1) Subject to the amounts appropriated by the general assembly and any provision of law relating to a shortfall in funds available for postsecondary financial assistance from the net proceeds of the state lottery, a Math & Science Teacher Loan to a Tennessee public school teacher shall be two thousand dollars (\$2,000) per academic year, regardless of the number of terms enrolled within that academic year. The total amount of a Math & Science Teacher Loan to a Tennessee public school teacher shall not exceed ten thousand dollars (\$10,000) for all years required for the teacher's program of study.
- (2) The Corporation shall disburse Math & Science Teacher Loan funds directly to eligible postsecondary institutions, which shall in turn credit the borrower's account or disburse funds to eligible borrowers with one credit or payment at the beginning of each academic term attended.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.05 APPLICATION PROCESS.

- (1) Tennessee tenured public school teachers shall submit to the Corporation an application and Promissory Note for a Math & Science Teacher Loan for each academic year of post-secondary enrollment.
- (2) The application deadline is September 1 for students beginning the academic year in the fall, February 1 for students who begin the academic year in the spring, and May 1 for students who begin the academic year in the summer.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.06 INTEREST.

Interest shall not be charged for a Math & Science Teacher Loan.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.07 REPAYMENT.

- (1) The Math & Science Teacher Loan must be repaid unless cancelled as described elsewhere in these rules. Repayment will include the full amount of the loan received.
- (2) Repayment shall begin at the end of the grace period, and shall be in monthly installments over a period of no more than eight (8) years, provided that payments must be a minimum of one hundred dollars (\$100) per month.
- (3) The Math & Science Teacher Loan may be prepaid in whole or part at any time without penalty.
- (4) If the borrower of a Math or Science Teacher Loan is determined to have received the award based on inaccurate application information, the full amount of the loan becomes due immediately.

PUBLIC NECESSITY RULES

- (5) If the borrower fails to complete an enrollment period for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to the Corporation. If the borrower withdraws after the refund period is over, the postsecondary institution must follow the Return of Title IV guidelines, if applicable, to calculate any return of the Math & Science Teacher Loan.
- (6) If a borrower issues a check, draft, warrant, or electronic funds transfer, which is subsequently returned to the Corporation due to insufficient funds, a stop payment order by the issuer, or any other reason, the payment to which these funds was applied shall be reversed on the borrower's account. Additionally, the Corporation may charge a reasonable service fee for such a transaction.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.08 DEFERMENT.

- (1) Repayment shall be deferred while the borrower is employed as a math or science teacher in a Tennessee public school system.
- (2) In order for repayment to be deferred, borrowers shall provide employment verification as a math or science public school teacher required by the Corporation.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.09 CANCELLATION/FORGIVENESS.

- (1) For each year of continuous full-time employment as a math or a science teacher in a Tennessee Public School System, the borrower shall receive a credit of fifty percent (50%) of one year's loan amount. Cancellation credit will be applied at the end of each year and upon receipt of verification of such service. Cancellation credit cannot be earned prior to completion of the advanced degree or certification program.
- (2) In order to receive cancellation credit, the borrower shall provide employment verification as required by the Corporation.
- (3) Cancellation credit shall not begin until the borrower completes the program of study for which the loan was provided.
- (4) The debt shall be cancelled on the basis of conclusive evidence that the borrower has died or has been totally and permanently disabled and cannot perform the teaching obligation outlined in the regulations. The borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to the loan application. If, at any time subsequent to an initial determination of disability, the borrower's condition improves to the point where a total and permanent disability no longer exists, the Corporation may reinstate any outstanding debt previously cancelled.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

PUBLIC NECESSITY RULES

1640-1-20-.10 LEAVE OF ABSENCE.

- (1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving the Math & Science Teacher Loan upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. Allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, a military obligation of the student or family member, to fulfill a religious commitment expected of all individuals of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may seek relief from the decision in accordance with Rule 1640-1-20-.11.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

1640-1-20-.11 APPEALS PROCEDURE.

- (1) Generally, the ruling of the Corporation's program administrator shall apply.
- (2) An individual who believes that the ruling of the program administrator was not in accordance with the published regulations and the Act may appeal to the authority of the Corporation's Appeals Panel for relief.
- (3) An individual who believes that the ruling of the Corporation's Appeals Panel was not in accordance with the published regulation and the Act may appeal to the authority of the Corporation's Board of Director's Appeal Committee. This is the final administrative remedy.

Authority: 2006 Tenn. Pub. Acts, ch. 977, and Tenn. Code Ann. §§49-4-201 and 49-4-924.

The public necessity rules set out herein were properly filed in the Department of State on the 20th day of November, 2006, 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 4th day of May, 2007. (11-09-06)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF REGULATORY SERVICES

There will be a public hearing conducted by the Tennessee Department of Agriculture to hear comments from the public concerning the promulgation of amendments to rules pursuant to T.C.A. § 62-21-105. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in the Ed Jones Auditorium located at Ellington Agricultural Center, 440 Hogan Road, Nashville, Tennessee at 1:00 a.m. (Central Time) on the 22nd day of January, 2007.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Agriculture 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 Liz Sneed, ADA Coordinator, at Tennessee Department of Agriculture, Ellington Agricultural Center, 440 Hogan Road, P.O. Box 40627, Nashville, Tennessee (615) 837-5116.

For a copy of the entire text of this notice of rulemaking hearing, contact: Kathy Booker, Pesticide Administrator, Tennessee Department of Agriculture, Ellington Agricultural Center, 440 Hogan Road, P. O. Box 40627, Nashville, Tennessee (615) 837-5133. The text of the rules may also be downloaded from the Department's website at <http://www.tennessee.gov/agriculture/>.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

CHAPTER 0080-6-14 PEST CONTROL OPERATORS

Rule 0080-6-14-.01 Qualifications of Applicants is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.01 QUALIFICATIONS OF LICENSING APPLICANTS.

- (1) Applicants are required to have a Commercial Pesticide Applicator Certification in the particular licensing category before taking a license examination as provided in Rule 0080-6-16-.03.
- (2) Applicants must be at least 18 years of age and a U.S. citizen or possess a current U.S. government issued Visa prior to taking the licensing examination.

RULEMAKING HEARINGS

- (3) Education - Applicants can qualify to take any license examination(s), except the license examination for Wood Destroying Organisms, based on their education as follows:
- (a) A license applicant will qualify to take a license examination based on their education if the applicant has a Bachelor's degree with a major or minor, as evidenced by an official transcript, in at least one or more of the following curricular: Agriculture, Biology, Chemistry, Forestry, Horticulture, Entomology, Plant Pathology and Plant Science or other similar degree.
 - (b) A license applicant for Pest Control Consultant will qualify for a license if they are a graduate of an accredited college or university with a Bachelor's degree in the field of pest control in which consultation is offered. A license in this category does not qualify the holder to perform pest control operations.
- (4) Education and Experience: Applicants can qualify to take any license examination(s), based on their education and experience as follows:
- (a) An applicant for the licensing examination in the category of Wood Destroying Organisms shall qualify with a degree as set forth in 3 (a) and one (1) year of full-time work experience in Wood Destroying Organisms.
 - (b) An applicant for the licensing examination in the category of Wood Destroying Organisms shall qualify with a Masters or PhD degree in entomology and successful completion of the Tennessee Apprentice Termite Technician School.
 - (c) An applicant with a current license and two or more years of experience in one of the following licensing categories of Horticulture, Lawn and Turf (HLT); Horticulture Interior (HRI); Weed Control-Right-of-Way and Industrial (WEC); or Agricultural-Ground Equipment (AGE) and twelve (12) semester hours of college or university course work or twenty-four (24) Continuing Education Units (CEUs) in any of the other categories listed in this paragraph will qualify to take any examination in these four license categories if the respective certification is obtained.
 - (d) An applicant for the Agricultural Ground Equipment and Horticultural, Lawn and Turf license examination must have twenty-four (24) months work experience or BA degree or have a minimum of twelve (12) semester hours of college or university course work or twenty-four (24) Continuing Education Units (CEUs) related to the field of Agricultural Ground Equipment or Horticulture, Lawn and Turf.
- (5) Experience - Applicants can qualify to take a license examination based on their experience. Applicants who take the examination based only on experience must have been registered with the department as a pest control technician or salesperson, as provided in T.C.A. §62-21-109, for a period of twenty-four (24) months of full-time work experience, or provide documentary evidence of such employment if the registration failed to occur at no fault of the applicant or if the experience was obtained out-of-state. An applicant can qualify to take a license examination based on experience as follows:
- (a) An applicant that has twenty-four (24) months of full-time verifiable work experience in the category of license for which the application is made will qualify for the license examination(s).

RULEMAKING HEARINGS

- (b) An applicant holding a valid Certified Crop Advisors (CCA) Certificate shall also have one (1) year of full-time work experience in the application of the category of license for which the application is made and the respective category of certification to qualify to take the Horticulture, Lawn and Turf (HLT) and Agricultural Ground Equipment (AGE) examinations.
- (c) An applicant with a current license in General Pest and Rodent Control will qualify to take the Public Health Mosquito Control license examination(s) if the respective certification category is obtained.
- (6) An applicant falsifying work experience shall not be eligible to take the examination for a period of two (2) years, after the applicant meets the required qualifications.
- (7) If the Department determines that inaccurate information was contained in the application after a person passes the examination and is issued a license, the license shall be revoked in accordance with the Uniform Administrative Procedures Act and the person shall not be allowed to resubmit an application for the license examination for a period of two (2) years.

Authority: T.C.A. §§62-21-105 and 62-21-118.

Rule 0080-6-14-.02 Certification of Qualifications is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.02 CERTIFICATION OF QUALIFICATIONS. Upon application to take a licensing examination, or at such other time as the Pest Control Board (hereinafter referred to as Board) may require, the applicant shall present:

- (1) A certified statement or letter from persons or firms in whose employment the applicant received any qualifying experience; and/or
- (2) A copy of a diploma, transcript, or certificate properly evidencing a qualifying degree, professional standing, course hours or Continuing Education Units (CEUs).

Authority: T.C.A. §§62-21-105 and 62-21-118.

Rule 0080-6-14-.03 Examination of Applicants is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.03 EXAMINATION OF LICENSING APPLICANTS.

- (1) An application(s) to take a license examination shall be submitted by the tenth day of the month preceding the scheduled examination month.
- (2) The license examinations will be given during the first month of each quarter at the Ellington Agricultural Center in Nashville, Tennessee or as often, and at the location(s) set forth by the Board.
- (3) All qualified applicants who have submitted an application will be notified of the date, place and time of the examination(s). Applicants who are not qualified will be notified in writing that the application was not approved with the reason(s) stated.

RULEMAKING HEARINGS

- (4) License examinations shall be given in two (2) parts as follows:
- (a) The first part of the examination will test applicants in the following areas of competency as they apply to the specific categories of licensure.
1. State and Federal Laws & Regulations
 2. Insects
 3. Weeds & Disease
 4. History (of Aquatic Plant Management)
 5. Plant Management Decision Making
 6. Herbicide Technology
 7. Herbicide Safety
 8. Adjuvants
 9. Fumigation
 10. Integrated Pest Management
 11. Environmental Considerations
 12. Principles of Vegetation Management
 13. Plant Growth Regulators
 14. Calibration of Application Equipment
 15. Common Problems encountered during Application
 16. Professionalism and Public Relations in Vegetation Management
 17. Pest Identification
 18. Pesticides and Human Health
 19. Drift Management
 20. Navigation (Aerial - using GPS, DGPS, OmniSTAR)
 21. Calculating area of Target Site
 22. Pesticide Measurement Systems
 23. Operations (Aerial - pilot & ground crews, aircraft crash response)

RULEMAKING HEARINGS

- 24. Mosquitoes & Human Diseases
- 25. Organization & Principles of Mosquito Control
- 26. General Structure & Lifecycle of Mosquitoes
- 27. Wood Destroying Organisms
- 28. Special Accounts
- 29. Pests on or Near Food
- 30. Urban IPM Programs
- 31. Implementing Urban Pest Management Programs

- (b) The second part of the examination will test applicants on specimen identification related to the particular license category.
- (5) A percentage score of seventy (70) shall be considered a passing grade on each part of the examination.
- (6) A maximum of two (2) hours shall be allowed for the completion of the first part of the examination and three (3) hours shall be allowed for the second part.
- (7) There is no limitation on the number of categories for which a licensing applicant may be examined during any examination period; however, the above stated time limit shall apply to one or multiple categories.
- (8) All applicants approved to take the license examination(s) shall be required to present a photo ID on the day of testing.
- (9) Licensing applicants who fail the first part of the examination shall not take the specimen identification part until passing the written part of the license examination(s). Applicants that fail the specimen identification part of the licensing exam shall only be required to take that part of the exam again.
- (10) If the examination facilitator determines that an applicant exhibits unethical behavior during an examination the applicant shall leave upon request of the facilitator. The applicant will be denied a license and will be ineligible to take a license examination for a period of two (2) years.

Authority: T.C.A. §§62-21-105, 62-21-112 and 62-21-118.

Rule 0080-6-14-.04 License Categories is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.04 LICENSE CATEGORIES. The license exams will be taken from study material developed by the University of Tennessee. Study material for the license exams may be purchased by contacting the University of Tennessee at (865) 974-7138 or on the University of Tennessee's website at <http://eppserver.ag.utk.edu/psep/psep.htm>.

RULEMAKING HEARINGS

- (1) Agricultural - Ground Equipment (AGE) - Control of agricultural pests by means other than fumigation. Applicants for this license must be certified in Agricultural Plant Pest Control.
- (2) Aquatic Pest Control (APC) - Control of aquatic plants and algae by the application of pesticides. Applicants for this license must be certified in Aquatic Pest Control.
- (3) Bird Control (BDC) - Control of pest birds by the use of pesticides. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.
- (4) Forest Pest Control (FPC) - Control of pest and diseases of trees in institutional and non-agricultural locations. Applicants for this license must be certified in Forest Pest Control.
- (5) Fumigation - Soil (FUS) - Control of agricultural pests found in the soil by application of a material that is a gas. This category includes the use of pesticides that when handled or applied are in a solid or liquid form and the effect produced by the gas which forms after the toxicant has been placed. Applicants for this license must be certified in Agricultural Plant Pest Control.
- (6) Fumigation - Structural (FUM) - Control of pests by application of a material that is a gas. This category includes the use of pesticides that when handled or applied are in a solid or liquid form and the effect produced by the gas which forms after the toxicant has been placed. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.
- (7) General Pest and Rodent Control (GRC) - Control of vertebrate and invertebrate pests in and around structures where they may be found, and which invade or are normally known to invade a structure, and which are not specifically covered by other categories of licenses described herein. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.
- (8) Horticultural - Interior (HRI) - Control of pests and diseases of plants. The category applies to areas such as residential or commercial locations, but does not include greenhouses. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (9) Horticulture - Lawn and Turf (HLT) - Control of pests and diseases of shrubs, trees, flowers, lawns and other turfgrasses in non-agricultural locations such as residential and commercial lawns and landscapes, parks and athletic fields. This category includes fleas and ticks, but no other pests that normally invade the inside of a structure and which are not specifically covered by other categories of licenses described herein. Applicants for this license must be certified in Ornamental and Turf Pest Control.
- (10) Public Health Mosquito Control (PHMC) - Management of all stages of mosquitoes on public land and public waters. Applicants for this license must be certified in Public Health Pest Control.
- (11) Weed Control - Right-of-Way and Industrial (WEC) - Control of plants, whether woody or herbaceous, by the application of chemicals generally classed as herbicides to industrial sites and right-of-way such as, but not limited to, highways, transmission lines, drainage ditches, etc. Applicants for this license must be certified in Right-of-Way Pest Control.
- (12) Wood Destroying Organisms (WDO) - Control of termites, various wood borers, carpenter bees, carpenter ants and decay without regard to the type or use of structure involved. Applicants for this license must be certified in Industrial, Institutional, Structural and Health-Related Pest Control.

RULEMAKING HEARINGS

- (13) Wood Preservatives (WPC) - Control of insects, fungi, marine borers and the effects of weather on wood products at the manufacturing or distribution stage that may damage or degrade the wood. Applicants for this license must be certified in Wood Preservation Pest Control.
- (14) Special (SPC) - Control of pests in special situations by methods not included in other licensed categories listed above. These licenses may or may not require an examination in the discretion of the board and are limited to specific pesticide uses and situations as determined by the board.

Authority: T.C.A. §§62-21-105 and 62-21-118.

Rule 0080-6-14-.06 Licenses - Requirement of Active Practice and Certification is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.06 LICENSES - REQUIREMENT OF ACTIVE PRACTICE AND CERTIFICATION.

- (1) Applicants passing the license examination(s) must pay all fees within one year of the examination date to obtain the license(s) or the applicant will be required to re-take and successfully pass the license examination(s). Individuals with extenuating circumstances, such as a medical condition or military service, are required to provide documented proof and will be evaluated on a per case basis.
- (2) If a license holder has not maintained a current license and the certification has expired, the license shall be renewable only after re-examination for the license and certification. Individuals with extenuating circumstances, such as a medical condition or military service, shall provide documented proof and will be evaluated on a per case basis.
- (3) The license shall be suspended upon the date the license holder's certification expires and reinstated when certification is obtained, provided that the expiration date of the certification has not exceeded one year. Individuals with extenuating circumstances, such as a medical condition or military service, shall provide documented proof and will be evaluated on a per case basis.

Authority: T.C.A §§4-3-203, 62-21-105, 62-21-118 and 62-21-123.

Rule 0080-6-14-.07 Requirements for Licensees in Fumigation is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.07 REQUIREMENTS FOR LICENSEES IN FUMIGATION. When a gas poisonous to human beings is used in fumigation, a certified applicator licensed in the category of fumigation, as provided in Rule 0080-6-14-.04 (5) and (6), shall be present and actively in charge of work and shall ensure that the following requirements are adhered to:

- (1) A gas mask that is protective against the gas being used shall be maintained at the location where the fumigation is being done.
- (2) Signs shall be prominently displayed at all points of entry to the building structure, or other fumigation site, declaring that the property is being fumigated and that no one should enter.

RULEMAKING HEARINGS

- (3) A guard shall be maintained at any building or structure normally inviting entrance by the public and shall have access to a gas mask. All doors shall be locked and posted and patrolled by the guard.
- (4) The certified and licensed applicator shall be responsible for clearing the structure of fumigants by following all label directions prior to re-entry for human occupancy.

Authority: T.C.A. §§4-3-203, 62-21-105 and 62-21-118.

Rule 0080-6-14-.11 Certification of Pest Control Technicians is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.11 CERTIFICATION OF COMMERCIAL PESTICIDE APPLICATORS

- (1) No charter holder or licensed applicator shall allow an uncertified person to apply pesticides except in accordance with this rule.
- (2) Any application of pesticides must be applied by a certified applicator or in the presence of a certified applicator certified in accordance with Rule 0080-6-16-.03 in the category in which services are being provided.
- (3) Any Commercial Pesticide Applicator applying pesticides, under the direct supervision of a licensed pest control operator, must be certified in accordance with Rule 0080-6-16-.03 in the category in which services are being provided.
- (4) All Commercial Pesticide Applicators are issued an individual commercial certification card and are responsible for maintaining their certification as provided in Rule 0080-6-16-.04.

Authority: T.C.A. §§4-3-203, 62-21-105 and 62-21-118.

Rule 0080-6-14-.12 Record Keeping Requirements for Commercial Pest Control Operators and Commercial Applicators is amended by deleting the rule in its entirety and substituting the following language so that as, amended, the rule shall read:

0080-6-14-.12 RECORD KEEPING REQUIREMENTS FOR COMMERCIAL PEST CONTROL OPERATORS AND COMMERCIAL APPLICATORS.

- (1) All commercial applicators and pest control operators shall keep true and accurate records of both restricted and non-restricted pesticides, retain such record for a period of two (2) years, and make the original records and copies thereof available to the Commissioner of Agriculture, or his designee.
- (2) These records must show:
 - (a) The applicator name(s) and TDA assigned ID number;
 - (b) The pesticide used;
 - (c) The target pest(s);

RULEMAKING HEARINGS

- (d) The crop, plant, house, business, or building the pesticide is applied on or to, and the location thereof;
- (e) The application rate;
- (f) The percentage of mixed-use dilution;
- (g) The landowner, agent of other person employing such applicator;
- (h) The date of service, and
- (i) The amount of pesticide used.

Authority: T.C.A. §§62-21-105, 62-21-118 and 62-21-120.

Rule 0080-6-14-.14 Requirements for Licensee in Aquatic Weed Control is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read:

0080-6-14-.14 REQUIREMENTS FOR LICENSEE IN AQUATIC WEED CONTROL. Any person or governmental entity applying herbicides in state waters for the control of aquatic weeds must be under the direct supervision of one licensed to do so by the provisions of this chapter.

Authority: T.C.A. §62-21-118.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 14th day of November, 2006. (11-05-06)

RULEMAKING HEARINGS

ARCHITECTURAL AND ENGINEERING EXAMINERS - 0120

There will be a hearing before the Tennessee State Board of Architectural and Engineering Examiners to consider the promulgation of rules and amendments to rules pursuant to T.C.A. § 62-2-203(c). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204, and will take place in Room 640 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. (Central Time) on Thursday, January 25, 2007.

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 State Board of Architectural and Engineering Examiners, attention John Cothron, Tennessee State Board of Architectural and Engineering Examiners, 500 James Robertson Parkway, 3rd Floor, Nashville, Tennessee 37243 at (615) 741-3221.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0120-1 REGISTRATION REQUIREMENTS AND PROCEDURES

AMENDMENTS

Paragraph (1) of rule 0120-1-.05 Applications – Engineer is amended by deleting the text of the paragraph and substituting instead the following so that, as amended, paragraph (1) of rule 0120-1-.05 shall read:

- (1) An applicant for registration as an engineer shall submit with the application a nonrefundable application fee of thirty dollars (\$30.00). Upon notification to the applicant of approval to take any required examination(s), the applicant shall pay to the Board the cost of the current examination(s), administration of the examination(s) and scoring. An applicant who has passed the required examination(s) shall also pay a biennial registration fee of one hundred forty dollars (\$140.00) and shall receive a certificate of registration.

Authority: T.C.A. §§62-2-203(c), 62-2-301(a) and 62-2-404(b).

Paragraph (1) of rule 0120-1-.09 References is amended by deleting the text of the paragraph and substituting instead the following so that, as amended, paragraph (1) of rule 0120-1-.09 shall read:

- (1) References named in applications for registration must be acquainted with the technical ability of the applicant, but need not be residents of the State of Tennessee. A minimum of five (5) references for architect, engineer, landscape architect and interior designer applicants shall be submitted. References from relatives will not be considered.

Authority: T.C.A. §§ 62-2-203(c) and 62-2-301(a).

RULEMAKING HEARINGS

Subparagraphs (b) of paragraph (1) of rule 0120-1-.10 Education and Experience Requirements – Engineer is amended by deleting the text of the subparagraph in its entirety and substituting instead the following so that, as amended, subparagraph (b) of paragraph (1) of rule 0120-1-.10 shall read:

- (1) (b) Nonaccredited engineering programs. An engineering curriculum of four (4) years or more which is a non-ABET accredited program shall be referred at the applicant's expense to a person or an entity approved by the Board and qualified to evaluate equivalency to an ABET accredited engineering program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is substantially equivalent to ABET accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding engineering degrees from institutions which do not have ABET accredited engineering programs in consideration of the factors outlined below.

Authority: T.C.A. §§62-2-203(c) and 62-2-401.

Subparagraph (c) of paragraph (1) of rule 0120-1-.10 Education and Experience Requirements – Engineer is amended by deleting subparagraph in its entirety redesignating the following subparagraphs accordingly.

Authority: T.C.A. § 62-2-203(c).

Paragraph (3) of rule 0120-1-.11 Education and Experience Requirements – Architect is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (3) of rule 0120-1-.11 shall read:

- (3) (a) Nonaccredited architecture programs. For purposes of T.C.A. §§ 62-2-501(2) and 62-2-502(b), an architectural curriculum of four (4) years or more which is a non-NAAB accredited program shall be referred at the applicant's expense to a person or entity approved by the Board and qualified to evaluate equivalency to an NAAB accredited program for evaluation and recommendation. If the curriculum for the degree at the time of the applicant's graduation is equivalent to NAAB accreditation requirements, the application shall be reviewed in accordance with the requirements for applicants holding architecture degrees from institutions which do not have NAAB accredited architecture programs in consideration of the factors outlined below.
- (b) In reviewing a non-accredited architectural curriculum, the Board may approve either an architectural curriculum of not less than four (4) years offered by a school of architecture as part of an architectural curriculum toward a NAAB accredited degree or its equivalent.
- (c) In reviewing applicants holding degrees from non-accredited architecture programs, whether obtained in the United States or otherwise, which are substantially equivalent to degrees from NAAB accredited programs, the Board may consider the following factors:
1. evidence of having obtained the statutory minimum acceptable practical experience in architectural work, and
 2. at least five (5) references from individuals having knowledge of the applicant's technical competence as an architect.

RULEMAKING HEARINGS

Authority: T.C.A. §§ 62-2-203(c), 62-2-501, 62-2-502 and 62-2-503.

Rule 0120-1-.13 Examinations – General is amended by deleting paragraph (1) in its entirety and renumbering the following paragraphs accordingly.

Authority: T.C.A. § 62-2-203(c).

Rule 0120-1-.14 Examinations – Engineer, Engineer Intern is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0120-1-.14 shall read:

0120-1-.14 EXAMINATIONS – ENGINEER, ENGINEER INTERN.

- (1) The NCEES prepares the examinations administered to candidates for registration as an engineer or certification as an engineer intern. The use of materials, reference books, notes, calculators and equipment in such examinations shall be in accordance with instructions by the NCEES.
- (2) The passing score on both the “Fundamentals of Engineering” and “Principles and Practice of Engineering” examinations shall be determined by the NCEES and shall be reported as “pass” or “fail.”
- (3) A candidate who passes either the “Fundamentals of Engineering” examination or the “Principles and Practice of Engineering” examination may retain credit for passing such examination indefinitely.
- (4) Any senior student applicant for certification as an engineer intern who fails to report for the required examination as scheduled must reapply for examination.

Authority: T.C.A. §§ 62-2-203(c), 62-2-401(a) and 62-2-405.

Rule 0120-1-.20 Reexamination – Engineer is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0120-1-.20 shall read:

0120-1-.20 REEXAMINATION – ENGINEER.

- (1) The “Principles and Practice of Engineering” examination is graded as a whole. A candidate for registration as an engineer who fails the examination must retake the examination in its entirety.
- (2) The fee for reexamination shall be the cost to the Board of the current NCEES examination, administration of the examination and scoring.

Authority: T.C.A. §§ 62-2-203(c). and 62-2-405(c).

RULEMAKING HEARINGS

Rule 0120-1-.21 Reexamination – Engineer – Intern is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 0120-1-.21 shall read:

0120-1-.21 REEXAMINATION – ENGINEER INTERN.

- (1) The “Fundamentals of Engineering” examination is graded as a whole. A candidate for certification as an engineer intern who fails the examination must retake the examination in its entirety.
- (2) The nonrefundable fee for reexamination shall be fifty dollars (\$50.00).

Authority: T.C.A. §§ 62-2-203(c) and 62-2-405(c).

Rule 0120-1-.25 Renewal of Registration is amended by adding the following as a new paragraph (2) and by renumbering the following paragraphs accordingly:

- (2) An architect, engineer or landscape architect may renew a current, valid registration by submitting a renewal form approved by the board, the required renewal fee, and evidence of having completed the number of professional development hours (PDH's) required by rule 0120-5-.04.

Authority: T.C.A. §§ 62-2-203(c), (d) and 62-2-307(c).

CHAPTER 0120-2 RULES OF PROFESSIONAL CONDUCT AMENDMENTS

Paragraph (5) of rule 0120-2-.07 Misconduct is amended by deleting the text of the paragraph in its entirety and substituting instead the following so that, as amended, paragraph (5) of rule 0120-2-.07 shall read:

- (5) A registrant may be deemed by the Board to be guilty of misconduct in his professional practice if:
 - (a) He has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony;
 - (b) His license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings;
 - (c) He has been certified by the department of human services as not being in compliance with an order of support pursuant to T.C.A. §§ 36-5-705 – 36-5-709; or
 - (d) He has been delinquent in the payment of the professional privilege tax pursuant to T.C.A. §§ 67-4-1702 – 67-4-1704.

Authority: T.C.A. §§ 36-5-706, 62-2-203(c), 62-2-308 and 67-4-1704.

RULEMAKING HEARINGS

Paragraph (1) of rule 0120-2-.09 Civil Penalties is amended by adding the following as a new subparagraph (b) and by renumbering the following subparagraphs accordingly:

- (1) (b) T.C.A. 62-2-308(a)(1).....\$250-1000

Authority: T.C.A. §§ 56-1-308 and 62-2-203(c).

CHAPTER 0120-4 INTERIOR DESIGNERS

AMENDMENTS

Rule 0120-4-.08 Renewal of Registration is amended by adding the following as a new paragraph (2) and by renumbering the following paragraphs accordingly:

- (2) A registered interior designer may renew a current, valid registration by submitting a renewal form approved by the board, the required renewal fee, and evidence of having completed the number of professional development hours (PDH's) required by rule 0120-5-.04.

Authority: T.C.A. §§ 62-2-203(c), (d) and 62-2-307(c).

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of November, 2006. (11-22-06)

RULEMAKING HEARINGS

DEPARTMENT OF COMMERCE AND INSURANCE - 0780 INSURANCE DIVISION

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance (“Division”) to consider the promulgation of rules. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in Conference Room A on the Fifth Floor of the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m. CST on the 17th day of January, 2007.

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

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

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-91 PUBLIC ADJUSTERS

NEW RULES

TABLE OF CONTENTS

0780-1-91-.01	Purpose
0780-1-91-.02	Scope
0780-1-91-.03	Authority
0780-1-91-.04	Definitions
0780-1-91-.05	Initial License Requirements
0780-1-91-.06	Examinations
0780-1-91-.07	Renewal Requirements
0780-1-91-.08	Procedures for Public Complaints

0780-1-91-.01 PURPOSE.

The purpose of this Chapter is to provide rules to assist the commissioner in administering the laws relating to the licensure and regulation of public adjusters, as provided for in T.C.A. §§ 56-6-901, *et seq.*

Authority: T.C.A. § 56-6-920.

RULEMAKING HEARINGS

0780-1-91-.02 SCOPE.

This Chapter applies to all persons acting as public adjuster in this state. This Chapter does not apply to:

- (1) An attorney at law admitted to practice in this state or an employee of such attorney acting under such attorney's supervision;
- (2) A person who negotiates or settles claims arising under a life or health insurance policy or annuity contract;
- (3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including without limitation photographers, contractors, appraisers of value, private investigators, engineers and handwriting experts;
- (4) A licensed health care provider, employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient;
- (5) A person who settles subrogation claims between insurers; or
- (6) A person who is employed by, or under contract to, an insurance company acting under such company's employment or contract.

Authority: T.C.A. §§ 56-6-903 and 56-6-920.

0780-1-91-.03 AUTHORITY.

This Chapter is issued pursuant to the authority vested in the commissioner pursuant to T.C.A. § 56-6-920.

Authority: T.C.A. § 56-9-920.

0780-1-91-.04 DEFINITIONS.

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance;
- (2) "Department" means the Tennessee Department of Commerce and Insurance;
- (3) "NAIC" means the National Association of Insurance Commissioners; and
- (4) "Public adjuster" means any person, other than someone who is employed by an insurance carrier, who, for compensation or any other thing of value, on behalf of the insured:
 - (a) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured on behalf of an insured, in investigating, verifying, substantiating, estimating, appraising, determining, presenting, and discussing the value of the claim, and effectuating the resolution of a claim for loss or damage covered by an insurance contract;

RULEMAKING HEARINGS

- (b) Advertises for employment as a public adjuster of insurance claims or solicits business or represents to the public to be a public adjuster of first party insurance claims, for losses or damages arising out of policies of insurance that insure real or personal property; or
- (c) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

Authority: T.C.A. §§ 56-6-902 and 920.

0780-1-91-.05 INITIAL LICENSE REQUIREMENTS.

- (1) A public adjuster shall apply for and receive from the commissioner a public adjuster license to operate as a public adjuster in this State. All applications for licensure shall contain the following:
 - (a) A completed application form adopted by the commissioner manually signed by the applicant or an officer or director of the business entity;
 - (b) Unless exempt pursuant to T.C.A. § 56-6-907, proof of the completion and passing of an examination required by Rule 0780-1-91-.06; and
 - (c) A non-refundable filing fee of one hundred dollars (\$100.00).
- (2) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Ninth Floor, Nashville, Tennessee 37243, Attention: Agent Licensing Section.
- (3) Applicants should allow thirty (30) days for the Department's review and granting of the application upon receipt of all required information.

Authority: T.C.A. § 56-6-920.

0780-1-91-.06 EXAMINATION REQUIREMENTS.

- (1) All individuals applying for a public adjuster license, unless otherwise exempted by law, are required to pass a written examination in order to test the applicant's knowledge as to the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state.
- (2) Each examination for a license shall be approved for use by the commissioner. Examinations for licensing shall be at such reasonable times and places accessible to the applicants as are designated by the commissioner.

RULEMAKING HEARINGS

- (3) An individual taking an examination pursuant to this Rule shall pay a non-refundable fee of fifty dollars (\$50.00) in order to take such examination. An individual who takes an examination more than once shall pay the examination fee for each subsequent taking of the examination, regardless of the reason for the subsequent examinations.
- (4) The minimum score that will be considered as a passing score for any examination given hereunder is seventy percent (70%). Any score on an exam below seventy percent (70%) shall be considered a failing score.
 - (a) An individual who has failed to pass an examination for a license applied for may take another examination following the expiration of thirty (30) days from the date of the applicant's last unsuccessful examination upon submission of the examination fee.
 - (b) An individual who has received a failing score on three (3) successive attempts of taking an examination for a license applied for will not be permitted to take a subsequent examination until the expiration of one (1) year from the date of the taking of the individual's last unsuccessful examination. After the one (1) year period, the individual may retake the examination. The individual shall also be required to file a new application accompanied by the appropriate filing and examination fees.
- (5) The commissioner may enter into a contract with a testing organization for the examination of applicants for license as a public adjuster. Notwithstanding any other provisions of this Chapter, such contract may provide that the testing organization shall:
 - (a) Assume responsibility for the administration and grading of the examination; and
 - (b) Charge and collect from each applicant a reasonable non-refundable examination fee in an amount subject to the approval of the commissioner.
- (6) No individual taking an examination for a public adjuster license shall possess or examine the examination questions and/or answers prior to the time of examination, nor shall any such individual use improper notes or other reference materials during the examination. Furthermore, no person shall have such questions or answers reproduced and/or disseminated for the purposes of assisting an applicant in passing an examination.
- (7) All individuals desiring to take a test under this Rule shall submit fingerprints to the commissioner with a fee representing the cost of having criminal history record checks performed.

Authority: *T.C.A. §§ 56-6-906 and 56-6-920.*

0780-1-91-.07 RENEWAL REQUIREMENTS.

- (1) A public adjuster shall renew its license every other year prior to the anniversary date of the initial granting of the license in order to continue to operate in this State. All applications for renewal shall contain the following:

RULEMAKING HEARINGS

- (a) A completed renewal form adopted by the commissioner signed by the applicant or an officer or director of the business entity in a manner acceptable to the commissioner;
 - (b) Proof of either:
 - 1. Completion of no less than twenty-four (24) hours of continuing education courses approved by the commissioner; or
 - 2. Completion of the applicant's resident state's continuing education requirements; and
 - (c) A non-refundable renewal fee of one hundred dollars (\$100.00).
- (2) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner by personal delivery or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Ninth Floor, Nashville, Tennessee 37243, Attention: Agent Licensing Section.
 - (3) In order to ensure the prompt review and granting of a renewal application, applicants should file all information required under Paragraph (1) of this Rule within thirty (30) days of the anniversary date of granting of the initial license.

Authority: T.C.A. § 56-6-920.

0780-1-91-.08 PROCEDURES FOR PUBLIC COMPLAINTS.

- (1) Complaints concerning public adjusters shall be handled by the Consumer Insurance Services Section (or successor organizational unit) of the Department's Insurance Division.
- (2) The Consumer Insurance Services Section (or successor organizational unit) shall record and review all complaints received under this Rule, and the process for such review and disposition shall be the same as that for all other complaints submitted to the Consumer Insurance Services Section.
- (3) Upon receiving notice of a complaint from the Consumer Insurance Services Section, a public adjuster shall send a written response to the Consumer Insurance Services Section within thirty (30) days thereafter.

Authority: T.C.A. § 56-6-920.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-32-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 17th day January 2007.

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 RULES

Rule 1200-13-1-.18 Criteria for Medicaid Reimbursement for Home Health is deleted in its entirety.

Rule 1200-13-1-.22 Medicaid Coverage of Services for Certified Nurse-Midwives is deleted in its entirety.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-26-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 17th day January 2007.

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 RULES

Paragraph (22) of rule 1200-13-13-.01 Definitions (Cost-effective Alternative Service) is deleted in its entirety and replaced with a new paragraph (22) which shall read as follows:

- (22) COST-EFFECTIVE ALTERNATIVE SERVICE shall mean a service that is not a covered service but that is approved by TennCare and CMS and provided at an MCC's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either (1) alternatives to covered Medicaid services that, in the MCC's judgment, are cost-effective or (2) preventative in nature and offered to avoid the development of conditions that, in the MCC's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, cost effective alternative services are not covered services and are provided only at an MCC's discretion.

Paragraph (45) of rule 1200-13-13-.01 Definitions (Home Health Services) is deleted in its entirety and replaced with a new paragraph (45) which shall read as follows:

- (45) HOME HEALTH SERVICES shall mean:
- (a) Any of the following services ordered by a treating physician and provided by a licensed home health agency pursuant to a plan of care at an enrollee's place of residence:
1. Part-time or intermittent nursing services;
 2. Home health aide services; or
 3. Physical therapy, occupational therapy, or speech pathology and audiology services.

RULEMAKING HEARINGS

- (b) Medical supplies, equipment, and appliances ordered by a treating physician and suitable for use at an enrollee's place of residence.
- (c) Home health providers may only provide services that have been ordered by the treating physician and are pursuant to a plan of care and may not provide other services such as general child care services, cleaning services or preparation of meals. For this reason and to the extent that home services are provided to a person under 18 years of age, a responsible adult (other than the home healthcare provider) must be present at all times in the home during provision of home health services.

Paragraph (62) of rule 1200-13-13-.01 Definitions (Medical Records) is deleted in its entirety and replaced with a new paragraph (62) which shall read as follows:

- (62) MEDICAL RECORD shall mean all medical histories; records, reports and summaries; diagnoses; prognoses; records of treatment and medication ordered and given; x-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical documentation in written or electronic format; and analyses of such information.

Paragraph (66) of rule 1200-13-13-.01 Definitions (Medically Necessary) is deleted in its entirety and replaced with a new paragraph (66) which shall read as follows:

- (66) MEDICALLY NECESSARY is defined by Tennessee Code Annotated, Section 71-5-144, and shall describe a medical item or service that meets the criteria set forth in that statute. The term "medically necessary," as defined by Tennessee Code Annotated, Section 71-5-144, applies to TennCare enrollees. Implementation of the term "medically necessary" is provided for in these regulations, consistent with the statutory provisions, which control in case of ambiguity. No enrollee shall be entitled to receive and TennCare shall not be required to pay for any items or services that fail fully to satisfy all criteria of "medically necessary" items or services, as defined either in the statute or in the Medical Necessity regulations at 1200-13-16.

Rule 1200-13-13-.01 Definitions is amended by adding new paragraph (74) and renumbering the present paragraph (74) as paragraph (75) and subsequent paragraphs renumbered accordingly so as amended the new paragraph (74) shall read as follows:

- (74) PERSONAL CARE SERVICES shall refer to an optional Medicaid benefit defined at 42 CFR 440-167 that, per the Tennessee Medicaid State Plan, Tennessee has not elected to include in the TennCare benefit package. To the extent that such services are available to children under the age of 21 when medically necessary under the provisions of EPSDT, the Bureau of TennCare designates home health aides as the providers qualified to deliver such services. When medically necessary, personal care services may be authorized outside of the home setting when normal life activities temporarily take the recipient outside of that setting. Normal life activity means routine work, school, religious services and clinic visits. The home health aide providing personal care services may accompany the recipient but may not drive. Normal life activities do not include non-routine or extended home absences.

Paragraph (80) of rule 1200-13-13-.01 Definitions (Private Duty Nursing Services) is deleted in its entirety and replaced with new paragraph (80) which shall read as follows:

- (80) PRIVATE DUTY NURSING SERVICES shall mean nursing services for recipients who require continuous skilled nursing care. Skilled nursing care is provided by a registered nurse or licensed practical nurse under the direction of the recipient's physician. An individual who needs

RULEMAKING HEARINGS

eight (8) or more hours of skilled nursing care during a 24-hour period shall be determined to need continuous skilled nursing care. As a general rule, only an individual who is dependent on technology-based medical equipment requiring frequent interventions will be determined to need continuous care. An individual who needs less than eight (8) hours of skilled nursing care will receive those services as an intermittent service under home health. If it is cost effective, non-skilled services may be provided by a nurse rather than a home health aide. However, it is the total number of hours of skilled nursing services, not the number of hours that the nurse is in the home, which determines whether the nursing services shall be considered continuous or intermittent. Private duty nursing services are limited to services provided in the recipient's own home, with the exception that a recipient under the age of twenty-one (21) who requires eight (8) or more hours of continuous skilled nursing care in a 24-hour period and is authorized to receive these services in the home setting may make use of the approved hours outside of that setting when normal life activities temporarily take him or her outside of that setting. Normal life activity means routine work, school, religious services and clinic visits. The private duty nurse may accompany the recipient but may not drive. Normal life activities do not include non-routine or extended home absences.

Paragraph (113) of rule 1200-13-13-.01 Definitions (Time-Sensitive Care) is deleted in its entirety and replaced by a new paragraph (113) which shall read as follows:

(113) TIME-SENSITIVE CARE shall mean care which requires a prompt medical response in light of the beneficiary's condition and the urgency of her need, as defined by a prudent lay person; provided, however, that a case may be treated as non-time sensitive upon written certification of the beneficiary's treating physician.

Subparagraph (d) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

(d) The MCC shall be allowed to provide cost effective alternative services as defined in rule 1200-13-13-.01(22). Cost effective alternative services are not covered services.

Rule 1200-13-13-.04 Covered Services is amended by adding a new paragraph (14) which shall read as follows:

(14) Prior Authorization for Home Health Nurse, Home Health Aide, and Private Duty Nursing Services.

Prior authorization by the MCO must be obtained in order to establish the medical necessity of all requested home health nurse, home health aide, and private duty nursing services.

(a) The following information must be provided when seeking prior authorization for all home health nurse, home health aide, and private duty nursing services:

1. Name of physician prescribing the service(s);
2. Specific information regarding the patient's medical condition and any associated disability that creates the need for the requested service(s).
3. Specific information regarding the service(s) the nurse or aide is expected to perform including the frequency with which each service must be performed (e.g., tube feeding

RULEMAKING HEARINGS

patient 7:00 am, 12:00 pm, and 5:00 pm daily; bathe patient once per day; administer medications three (3) times per day; catheterize patient as needed from 8:00 am to 5:00 pm Monday through Friday; change dressing on wound three (3) times per week). Such information should also include the total period of time that the services are anticipated to be medically necessary by the treating physician (e.g., total number of weeks or months).

- (b) Home health nurses and aides and private duty nurses will never be authorized to personally transport a TennCare enrollee. Home health nurses will never be authorized to accompany an enrollee outside the home. Home health aides and private duty nurses will never be authorized to accompany an enrollee twenty-one (21) years of age or older outside the home.
- (c) Nursing services (provided as part of home health services or by a private duty nurse) will be approved only if the requested service(s) is of the type that must be provided by a nurse as opposed to an aide, except that the MCO may elect to have a nurse perform home health aide services in addition to nursing services if this is a less costly alternative than providing the services of both a nurse and an aide. Examples of appropriate nursing services include, but are not limited to, medication administration, catheterization, and ventilator management.
- (d) Home health aide services will only be approved if the requested service(s) meet all medical necessity requirements including the requirements of 1200-13-16-.05(4)(d). Thus, home health aide services will not be approved to provide child care services, prepare meals, perform housework, or generally supervise patients. Examples of appropriate home health aide services include, but are not limited to, patient transfers and bathing.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-19-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 17th day January 2007.

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

Part 80. of subparagraph (b) of paragraph (3) of rule 1200-13-13-.10 Exclusions is amended by adding subpart (iv) which shall read as follows:

- (iv) Any non-emergency out-of-state transportation, including airfare, that has not been prior authorized by the MCC. This includes the costs of transportation to obtain out-of-state care that has been authorized by the MCC. Out-of-state transportation must be prior authorized independently of out-of-state care.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-20-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 17th day January 2007.

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 RULES

Part 5. and 6. of subparagraph (a) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new parts 5. and 6. which shall read as follows:

5. Appropriate notice shall be given to an enrollee by the State or MCC when a claim for service or reimbursement is denied because an enrollee has exceeded a benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. During the applicable time period for each benefit limit, such notice shall only be provided the first time a claim is denied because an enrollee has exceeded a benefit limit. The State or MCC will not be required to provide any notice when an enrollee is approaching or reaches a benefit limit.
6. Appropriate notice shall be given to an enrollee by a provider when an enrollee exceeds a non-pharmacy benefit limit in the following circumstances:
 - (i) The provider denies the request for a non-pharmacy service because an enrollee has exceeded the applicable benefit limit; or
 - (ii) The provider informs an enrollee that the non-pharmacy service will not be covered by TennCare because he/she has exceeded the applicable benefit limit and the enrollee chooses not to receive the service.
 - (iii) Pursuant to approved 1115 waiver authority, applicable non-pharmacy services for which a provider may deny a claim for service because a benefit limit has been reached include Inpatient and Outpatient Substance Abuse Benefits (including detoxification days) for adults age 21 and older as set out at rule 1200-13-13-.04.

RULEMAKING HEARINGS

During the applicable time period for each non-pharmacy benefit limit, providers shall only be required to issue this notice the first time an enrollee does not receive a non-pharmacy service from the provider because he/she has exceeded the applicable benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-13-.11(1)(c)1. Providers will not be required to issue any notice when an enrollee is approaching or reaches a non-pharmacy benefit limit.

Subparagraph (c) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (c) which shall read as follows:

(c) Notice Contents.

1. Whenever this rule requires that a TennCare enrollee receive written notice of an adverse action affecting medical assistance, the notice must contain the following elements, written in concise, readable terms:
 - (i) The type and amount of TennCare services at issue and the identity of the individual, if any, who prescribed the services, so long as such information is applicable and has been provided to the MCC.
 - (ii) A statement of reasons for the proposed action. The statement of reasons shall include the specific facts, personal to the enrollee, which support the proposed action and sources from which such facts are derived. If the proposed action turns on a determination of medical necessity or other clinical decision regarding a medical item or service that has been recommended by the treating physician, the statement of reasons shall:
 - (I) Identify by name those clinicians who were consulted in reaching the decision at issue;
 - (II) Identify specifically those medical records upon which those clinicians relied in reaching his/her decision; and
 - (III) Specify what part(s) of the criteria for medical necessity or coverage was not met; and
 - (IV) Include a statement of reasons for the weight given to the treating provider. Such criteria may be satisfied by:
 - I. Citing an MCC policy that:
 - A. Lists the UM approval criteria for the requested service; and
 - B. Includes references to the evidence on which the policy is based; and
 - II. Explaining how the enrollee can obtain a copy of the policy; and
 - III. Explaining why the service was denied in light of the enrollee's individual circumstances (i.e., how

RULEMAKING HEARINGS

the treating physician's recommendation deviated significantly from the MCC's evidence-based criteria).

- (iii) Reference to the legal or policy basis for a proposed adverse action, including a plain and concise statement of, and official citation to, the applicable law, federal waiver provision, or TennCare contract provision relied upon.
 - (iv) To the extent that the initial notice of adverse action is issued prior to the member's filing a medical appeal, inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.
 - (v) If the enrollee has an ongoing illness or condition requiring medical care and the MCC or its network provider is under a duty to provide a discharge plan or otherwise arrange for the continuation of treatment following the proposed adverse action, the notice must include a readable explanation of the discharge plan, if any, and a description of the specific arrangements in place to provide for the enrollee's continuing care.
2. Remedying of Notice. If a notice of adverse action provided to an enrollee does not meet the notice content requirements of rule 1200-13-13-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees prior to issuance of the notice of hearing. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.
3. If a determination that a notice of adverse action fails to satisfy notice content requirements of rule 1200-13-13-.11(1)(c)1. is made after issuance of the notice of hearing or after a corrected notice has already been provided to an enrollee, unless the service at issue is non-covered or medically contraindicated, TennCare will automatically resolve the appeal in favor of the enrollee, subject to the MCC's right to take subsequent adverse action following the issuance of a new notice of action.

Subpart (iv) of part 3. of subparagraph (d) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced by a new subpart (iv) which shall read as follows:

- (iv) If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request. A decision will be made within twenty-four (24) hours of receipt of a complete prior authorization request, but no more than three (3) business days after receipt of the enrollee's call seeking prior authorization. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.

RULEMAKING HEARINGS

Subparts (i) and (ii) of part 6. of subparagraph (d) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subparts (i) and (ii) which shall read as follows:

- (i) TennCare will first determine whether the claim has been previously denied or whether a request for prior authorization has been denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.
- (ii) If the claim or request for prior authorization had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-13-.11(1)(d) 1. to 3.

Part 2. of subparagraph (g) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

- 2. Whenever it comes to the attention of the Bureau of TennCare or an MCC that a TennCare covered service will be or has been delayed, denied, reduced, suspended or terminated in violation of any of the notice requirements of this rule:
 - (i) Prior to an appeal or in the early stages of an appeal (i.e., before issuance of a timely notice of hearing), TennCare or the MCC may cure any such deficiencies by providing one corrected notice to a TennCare beneficiary. If the beneficiary has not yet filed an appeal, the time limit permitted for the beneficiary's response will be restarted upon issuance of the corrected notice;
 - (ii) In the later stages of an appeal (i.e., after issuance of a timely notice of hearing), TennCare or the MCC will immediately provide that service in the quantity and for the duration prescribed, subject to TennCare's or the MCC's right to reduce or terminate the service in accordance with the procedures required by this rule.

Subpart (ii) of part 3. of subparagraph (g) of paragraph (1) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (ii) which all read as follows:

- (ii) The provider will be informed that the service will be authorized if prescribed and found to be medically necessary; and

The introductory sentence of subparagraph (b) and part 1. of subparagraph (b) of paragraph (2) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new introductory sentence and new part 1. of subparagraph (b) which shall read as follows:

- (b) An enrollee's request for appeal, including oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse actions that have been taken or are proposed to be taken, may not be denied, including instances in which:

RULEMAKING HEARINGS

1. The enrollee lacks an order or prescription from a provider supporting the appeal, provided however, that the State may create an administrative grievance or other informal process to address appeals by enrollees without an order or prescription;

Subparagraph (e) of paragraph (2) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by deleting the last sentence so as amended subparagraph (e) shall read as follows:

- (e) To appeal in person, by telephone, or in writing. Reasonable accommodations shall be made for any person with disabilities who requires assistance with his/her appeal, such as an appeal by TDD services or other communication device for people with disabilities. Written requests for appeals made at county TDHS offices shall be stamped and immediately forwarded to the TennCare Bureau for processing and entry in the central registry.

The introductory paragraph to subparagraph (g) of paragraph (2) of rule 1200-13-13-.11 Appeal of Adverse Action Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new introductory paragraph which shall read as follows:

- (g) For ongoing services, have the right to continuation or reinstatement of services, pursuant to 42 C.F.R §§ 431.230-.231 as modified by this rule, pending appeal when the enrollee submits a timely appeal and timely request for such services. When an enrollee is so entitled to continuation or reinstatement of services, this right may not be denied for any reason, including:

Part 2. of subparagraph (b) of paragraph (3) of rule 1200-13-13-.11 Appeal of Adverse Action Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

2. Medical opinions shall be evaluated in accordance with the *Grier Revised Consent Decree* and pursuant to TennCare Medical Necessity rule 1200-13-16. Reliance upon insurance industry guidelines or utilization control criteria of general application, without consideration of the individual enrollee's medical history, does not satisfy this requirement and cannot be relied upon to support an adverse action affecting TennCare services.

The introductory paragraph to subparagraph (e) of paragraph (3) of rule 1200-13-13-.11 Appeal of Adverse Action Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new introductory paragraph to subparagraph (e) which shall read as follows:

- (e) Appeals When Enrollees Lack a Prescription. If a TennCare enrollee appeals an adverse action and TennCare determines that the basis of the appeal is that the enrollee lacks a prescription, TennCare may require the enrollee to exhaust the following administrative process before an appeal can proceed:

Part 1. of subparagraph (e) of paragraph (3) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding "ing" to the word "inform" in the first sentence so as amended part 1. shall read as follows:

1. TennCare will provide appropriate notice to the enrollee informing him/her that he/she will be required to complete an administrative process. Such administrative process requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required

RULEMAKING HEARINGS

to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.

Part 10. of subparagraph (b) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 10. which shall read as follows:

10. Resolution, including a hearing with an ALJ if the case has not been previously resolved in favor of the enrollee, within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45)) days when additional time is required to obtain an enrollee's medical records) for expedited appeals, from the date of receipt of the appeal.

Subpart (i) of part 2. of subparagraph (f) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (i) which shall read as follows:

- (i) TennCare shall attempt to complete such review within five (5) days of the issuance of the decision of the impartial hearing officer.

Part 2. of subparagraph (f) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding a new subpart (ii) and relettering the present (ii) as (iii) and subsequent subparts relettered accordingly so as amended the new subpart (ii) shall read as follows:

- (ii) If TennCare is unable to take final agency action within five (5) days of the issuance of such decision, prompt corrective action by the fifth (5th) day is required, pursuant to rule 1200-13-13-.11(7)(f). However, the State shall not be prohibited from taking final agency action as expeditiously as possible and may immediately implement such final agency action to reduce, suspend, or terminate a service for which corrective action had been provided.

Subpart (iii) of part 1. of subparagraph (g) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced by a new subpart (iii) which shall read as follows:

- (iii) Continuation of reinstatement of services within ten (10) days of MCC-initiated notice of action to terminate, suspend or reduce other ongoing services or prior to the date of action.

The introductory paragraph to part 5. of subparagraph (g) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new introductory paragraph to part 5. which shall read as follows:

5. Resolution, including a hearing with an ALJ if the case has not been previously resolved in favor of the enrollee, of expedited appeals shall be provided within thirty-one (31) days or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. TennCare is permitted to seek final agency review by the TennCare Commissioner or his designee in any appeal in which the enrollee prevails by a

RULEMAKING HEARINGS

decision of an administrative law judge (ALJ) who is not an employee or official of the Department of Finance and Administration or Bureau of TennCare. Provided however, that if the enrollee prevails at any stage of the appeal process and TennCare seeks final agency review, the State may not await the conclusion of this review before providing prompt corrective action. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:

Subparts (iii) and (vii) of part 6. of subparagraph (g) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subparts (iii) and (vii) which shall read as follows:

- (iii) When coverage of a prescription drug or service is denied because the requested drug or service is not a category or class of drugs or services covered by TennCare;
- (vii) If TennCare had not paid for the type and amount of service for which continuation or reinstatement is requested prior to the appeal.

Subparagraph (h) of paragraph (4) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (h) which shall read as follows:

- (h) Expedited appeals.
 - 1. Expedited appeals of any action involving time-sensitive care must be resolved within thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received.
 - 2. Care will only qualify as time-sensitive if a covered benefit has been delayed, denied, terminated or suspended; the service is not defined by TennCare policy as never constituting an emergency; and in the judgment of a member's treating physician or in the judgment of a prudent layperson that is not subsequently overturned by written physician certification, waiting ninety (90) days to receive such benefit will result in:
 - (i) Serious health problems or death;
 - (ii) Serious dysfunction of a bodily organ or part; or
 - (iii) Hospitalization.
 - 3. MCCs shall complete reconsideration of expedited appeals within five (5) days, or within fourteen (14) days when additional time is required to obtain an enrollee's medical records, after receiving notification of the appeal. If the MCC does not complete reconsideration within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided that the missed

RULEMAKING HEARINGS

deadline may be remedied early in the appeals process such that the appeal is resolved within ninety (90) days from the date the appeal is received.

Subparagraphs (a), (b), (d), and (f) of paragraph (7) of rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced by new subparagraphs (a), (b), (d), and (f) which shall read as follows:

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-13-.11(1)(b)2. or as expeditiously as the enrollee's health condition requires. Failure by the MCCs to act upon a request for prior authorization within twenty-one (21) days shall result in an automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-13-.11(8).
- (b) MCCs must complete reconsideration of non-expedited appeals within fourteen (14) days. MCCs must complete reconsideration of expedited appeals involving time sensitive care within five (5) days, which shall be extended to fourteen (14) days if additional time is required to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee provided that the missed deadline may be remedied early in the appeals process such that the appeal is resolved within ninety (90) days from the date the appeal is received.
- (d) Failure to meet the ninety (90) day or thirty-one (31) day (extended to forty-five (45) calendar days when necessary to allow sufficient time to obtain the enrollee's medical records) deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication rule 1200-13-13-.11 (8). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, terminating the provision or payment of the service.
- (f) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC take corrective action to implement the decision. For purposes of meeting the five (5) day time limit for corrective action, the MCC shall take steps necessary to ensure:
 - 1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
 - 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at his/her own cost; or
 - 3. If the enrollee has already received the service, but has not paid the provider, that the enrollee is not billed for the service and that the enrollee's care is not jeopardized by non-payment.

RULEMAKING HEARINGS

In the event that a decision in favor of an enrollee is modified or overturned, TennCare shall possess the authority to immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-21-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 17th day January 2007.

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 RULES

Paragraph (21) of rule 1200-13-14-.01 Definitions (Cost-effective Alternative Service) is deleted in its entirety and replaced with a new paragraph (21) which shall read as follows:

- (21) Cost-Effective Alternative Service shall mean a service that is not a covered service but that is approved by TennCare and CMS and provided at an MCC's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either (1) alternatives to covered Medicaid services that, in the MCC's judgment, are cost-effective or (2) preventative in nature and offered to avoid the development of conditions that, in the MCC's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, cost effective alternative services are not covered services and are provided only at an MCC's discretion.

Paragraph (44) of rule 1200-13-14-.01 Definitions (Home Health Services) is deleted in its entirety and replaced with a new paragraph (44) which shall read as follows:

(44) Home Health Services shall mean:

- (a) Any of the following services ordered by a treating physician and provided by a licensed home health agency pursuant to a plan of care at an enrollee's place of residence:
1. Part-time or intermittent nursing services;
 2. Home health aide services; or
 3. Physical therapy, occupational therapy, or speech pathology and audiology services.

RULEMAKING HEARINGS

- (b) Medical supplies, equipment, and appliances ordered by a treating physician and suitable for use at an enrollee's place of residence.
- (c) Home health providers may only provide services that have been ordered by the treating physician and are pursuant to a plan of care and may not provide other services such as general child care services, cleaning services or preparation of meals. For this reason and to the extent that home services are provided to a person under 18 years of age, a responsible adult (other than the home healthcare provider) must be present at all times in the home during provision of home health services.

Paragraph (61) of rule 1200-13-14-.01 Definitions (Medical Records) is deleted in its entirety and replaced with a new paragraph (61) which shall read as follows:

- (61) Medical Record shall mean all medical histories; records, reports and summaries; diagnoses; prognoses; records of treatment and medication ordered and given; x-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical documentation in written or electronic format; and analyses of such information.

Paragraph (65) of rule 1200-13-14-.01 Definitions (Medically Necessary) is deleted in its entirety and replaced with a new paragraph (65) which shall read as follows:

- (65) Medically Necessary is defined by Tennessee Code Annotated, Section 71-5-144, and shall describe a medical item or service that meets the criteria set forth in that statute. The term "medically necessary," as defined by Tennessee Code Annotated, Section 71-5-144, applies to TennCare enrollees. Implementation of the term "medically necessary" is provided for in these regulations, consistent with the statutory provisions, which control in case of ambiguity. No enrollee shall be entitled to receive and TennCare shall not be required to pay for any items or services that fail fully to satisfy all criteria of "medically necessary" items or services, as defined either in the statute or in the Medical Necessity regulations at 1200-13-16.

Rule 1200-13-14-.01 Definitions is amended by adding new paragraph (73) and renumbering the present paragraph (73) as paragraph (74) and subsequent paragraphs renumbered accordingly so as amended the new paragraph (73) shall read as follows:

- (73) Personal Care Services shall refer to an optional Medicaid benefit defined at 42 CFR 440-167 that, per the Tennessee Medicaid State Plan, Tennessee has not elected to include in the TennCare benefit package. To the extent that such services are available to children under the age of 21 when medically necessary under the provisions of EPSDT, the Bureau of TennCare designates home health aides as the providers qualified to deliver such services. When medically necessary, personal care services may be authorized outside of the home setting when normal life activities temporarily take the recipient outside of that setting. Normal life activity means routine work, school, religious services and clinic visits. The home health aide providing personal care services may accompany the recipient but may not drive. Normal life activities do not include non-routine or extended home absences.

Paragraph (79) of rule 1200-13-14-.01 Definitions (Private Duty Nursing Services) is deleted in its entirety and replaced with new paragraph (79) which shall read as follows:

- (79) Private Duty Nursing Services shall mean nursing services for recipients who require continuous skilled nursing care. Skilled nursing care is provided by a registered nurse or licensed

RULEMAKING HEARINGS

practical nurse under the direction of the recipient's physician. An individual who needs eight (8) or more hours of skilled nursing care during a 24-hour period shall be determined to need continuous skilled nursing care. As a general rule, only an individual who is dependent on technology-based medical equipment requiring frequent interventions will be determined to need continuous care. An individual who needs less than eight (8) hours of skilled nursing care will receive those services as an intermittent service under home health. If it is cost effective, non-skilled services may be provided by a nurse rather than a home health aide. However, it is the total number of hours of skilled nursing services, not the number of hours that the nurse is in the home, which determines whether the nursing services shall be considered continuous or intermittent. Private duty nursing services are limited to services provided in the recipient's own home, with the exception that a recipient under the age of twenty-one (21) who requires eight (8) or more hours of continuous skilled nursing care in a 24-hour period and is authorized to receive these services in the home setting may make use of the approved hours outside of that setting when normal life activities temporarily take him or her outside of that setting. Normal life activity means routine work, school, religious services and clinic visits. The private duty nurse may accompany the recipient but may not drive. Normal life activities do not include non-routine or extended home absences.

Paragraph (112) of rule 1200-13-14-.01 Definitions (Time-Sensitive Care) is deleted in its entirety and replaced by a new paragraph (112) which shall read as follows:

(112) Time-Sensitive Care shall mean care which requires a prompt medical response in light of the beneficiary's condition and the urgency of her need, as defined by a prudent lay person; provided, however, that a case may be treated as non-time sensitive upon written certification of the beneficiary's treating physician.

Subparagraph (d) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

(d) The MCC shall be allowed to provide cost effective alternative services as defined in rule 1200-13-14-.01(21). Cost effective alternative services are not covered services.

Rule 1200-13-14-.04 Covered Services is amended by adding a new paragraph (14) which shall read as follows:

(14) Prior Authorization for Home Health Nurse, Home Health Aide, and Private Duty Nursing Services.

Prior authorization by the MCO must be obtained in order to establish the medical necessity of all requested home health nurse, home health aide, and private duty nursing services.

(a) The following information must be provided when seeking prior authorization for all home health nurse, home health aide, and private duty nursing services:

1. Name of physician prescribing the service(s);
2. Specific information regarding the patient's medical condition and any associated disability that creates the need for the requested service(s).
3. Specific information regarding the service(s) the nurse or aide is expected to perform including the frequency with which each service must be performed (e.g., tube feeding patient

RULEMAKING HEARINGS

7:00 am, 12:00 pm, and 5:00 pm daily; bathe patient once per day; administer medications three (3) times per day; catheterize patient as needed from 8:00 am to 5:00 pm Monday through Friday; change dressing on wound three (3) times per week). Such information should also include the total period of time that the services are anticipated to be medically necessary by the treating physician (e.g., total number of weeks or months).

- (b) Home health nurses and aides and private duty nurses will never be authorized to personally transport a TennCare enrollee. Home health nurses will never be authorized to accompany an enrollee outside the home. Home health aides and private duty nurses will never be authorized to accompany an enrollee twenty-one (21) years of age or older outside the home.
- (c) Nursing services (provided as part of home health services or by a private duty nurse) will be approved only if the requested service(s) is of the type that must be provided by a nurse as opposed to an aide, except that the MCO may elect to have a nurse perform home health aide services in addition to nursing services if this is a less costly alternative than providing the services of both a nurse and an aide. Examples of appropriate nursing services include, but are not limited to, medication administration, catheterization, and ventilator management.
- (d) Home health aide services will only be approved if the requested service(s) meet all medical necessity requirements including the requirements of 1200-13-16-.05(4)(d). Thus, home health aide services will not be approved to provide child care services, prepare meals, perform housework, or generally supervise patients. Examples of appropriate home health aide services include, but are not limited to, patient transfers and bathing.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-22-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 17th day January 2007.

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 RULES

Subparagraph (a) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding parts 5. and 6. which shall read as follows:

5. Appropriate notice shall be given to an enrollee by the State or MCC when a claim for service or reimbursement is denied because an enrollee has exceeded a benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-14-.11(1)(c)1. During the applicable time period for each benefit limit, such notice shall only be provided the first time a claim is denied because an enrollee has exceeded a benefit limit. The State or MCC will not be required to provide any notice when an enrollee is approaching or reaches a benefit limit.
6. Appropriate notice shall be given to an enrollee by a provider when an enrollee exceeds a non-pharmacy benefit limit in the following circumstances:
 - (i) The provider denies the request for a non-pharmacy service because an enrollee has exceeded the applicable benefit limit; or
 - (ii) The provider informs an enrollee that the non-pharmacy service will not be covered by TennCare because he/she has exceeded the applicable benefit limit and the enrollee chooses not to receive the service.
 - (iii) Pursuant to approved 1115 waiver authority, applicable non-pharmacy services for which a provider may deny a claim for service because a benefit limit has been reached include Inpatient and Outpatient Substance Abuse Benefits (including detoxification days) for adults age 21 and older as set out at rule 1200-13-14-.04.

RULEMAKING HEARINGS

During the applicable time period for each non-pharmacy benefit limit, providers shall only be required to issue this notice the first time an enrollee does not receive a non-pharmacy service from the provider because he/she has exceeded the applicable benefit limit. Such notice shall not be subject to the requirements of rule 1200-13-14-.11(1)(c)1. Providers will not be required to issue any notice when an enrollee is approaching or reaches a non-pharmacy benefit limit.

Subparagraph (c) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (c) which shall read as follows:

(c) Notice Contents.

1. Whenever this rule requires that a TennCare enrollee receive written notice of an adverse action affecting medical assistance, the notice must contain the following elements, written in concise, readable terms:
 - (i) The type and amount of TennCare services at issue and the identity of the individual, if any, who prescribed the services, so long as such information is applicable and has been provided to the MCC.
 - (ii) A statement of reasons for the proposed action. The statement of reasons shall include the specific facts, personal to the enrollee, which support the proposed action and sources from which such facts are derived. If the proposed action turns on a determination of medical necessity or other clinical decision regarding a medical item or service that has been recommended by the treating physician, the statement of reasons shall:
 - (I) Identify by name those clinicians who were consulted in reaching the decision at issue;
 - (II) Identify specifically those medical records upon which those clinicians relied in reaching his/her decision; and
 - (III) Specify what part(s) of the criteria for medical necessity or coverage was not met; and
 - (IV) Include a statement of reasons for the weight given to the treating provider. Such criteria may be satisfied by:
 - I. Citing an MCC policy that:
 - A. Lists the UM approval criteria for the requested service; and
 - B. Includes references to the evidence on which the policy is based; and
 - II. Explaining how the enrollee can obtain a copy of the policy; and

RULEMAKING HEARINGS

- III. Explaining why the service was denied in light of the enrollee's individual circumstances (i.e., how the treating physician's recommendation deviated significantly from the MCC's evidence-based criteria).
 - (iii) Reference to the legal or policy basis for a proposed adverse action, including a plain and concise statement of, and official citation to, the applicable law, federal waiver provision, or TennCare contract provision relied upon.
 - (iv) To the extent that the initial notice of adverse action is issued prior to the member's filing a medical appeal, inform the enrollee about the opportunity to contest the decision, including the right to an expedited appeal in the case of time-sensitive care and the right to continuation or reinstatement of benefits pending appeal, when applicable.
 - (v) If the enrollee has an ongoing illness or condition requiring medical care and the MCC or its network provider is under a duty to provide a discharge plan or otherwise arrange for the continuation of treatment following the proposed adverse action, the notice must include a readable explanation of the discharge plan, if any, and a description of the specific arrangements in place to provide for the enrollee's continuing care.
2. Remedying of Notice. If a notice of adverse action provided to an enrollee does not meet the notice content requirements of rule 1200-13-14-.11(1)(c)1., TennCare will not automatically resolve the appeal in favor of the enrollee. TennCare or the MCC may cure any such deficiencies by providing one corrected notice to enrollees prior to issuance of the notice of hearing. If a corrected notice is provided to an enrollee, the reviewing authority shall consider only the factual reasons and legal authorities cited in the corrected notice, except that additional evidence beneficial to the enrollee may be considered on appeal.
 3. If a determination that a notice of adverse action fails to satisfy notice content requirements of rule 1200-13-14-.11(1)(c)1. is made after issuance of the notice of hearing or after a corrected notice has already been provided to an enrollee, unless the service at issue is non-covered or medically contraindicated, TennCare will automatically resolve the appeal in favor of the enrollee, subject to the MCC's right to take subsequent adverse action following the issuance of a new notice of action.

Subpart (iv) of part 2. of subparagraph (d) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced by a new subpart (iv) which shall read as follows:

- (iv) If an enrollee seeks prior authorization after attempting to contact the prescribing physician and has allowed twenty-four (24) hours to lapse since the denial of coverage for the prescription, the PBM will review this request. A decision will be made within twenty-four (24) hours of receipt of a complete prior authorization request, but no more than

RULEMAKING HEARINGS

three (3) business days after receipt of the enrollee's call seeking prior authorization. If the request is resolved as a result of the prescribing physician making a therapy change, the PBM will provide notice to the enrollee informing him/her of this resolution. If the PBM denies this request, the PBM will provide the enrollee with appropriate notice, informing him/her of the right to appeal the denial and to continue or reinstate benefits, when applicable.

Subparts (i) and (ii) of part 5. of subparagraph (d) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subparts (i) and (ii) which shall read as follows:

- (i) TennCare will first determine whether the claim has been previously denied or whether a request for prior authorization has been denied. If the claim was paid upon approval of prior authorization or the enrollee received an alternative prescription ordered by his/her prescribing physician, TennCare will provide appropriate notice to the enrollee, informing them that the request has already been resolved.
- (ii) If the claim or request for prior authorization had already been denied, TennCare will determine the reason for such denial and follow the applicable processes identified in rule 1200-13-14-.11(1)(d) 1. to 3.

Part 2. of subparagraph (g) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

- 2. Whenever it comes to the attention of the Bureau of TennCare or an MCC that a TennCare covered service will be or has been delayed, denied, reduced, suspended or terminated in violation of any of the notice requirements of this rule:
 - (i) Prior to an appeal or in the early stages of an appeal (i.e., before issuance of a timely notice of hearing), TennCare or the MCC may cure any such deficiencies by providing one corrected notice to a TennCare beneficiary. If the beneficiary has not yet filed an appeal, the time limit permitted for the beneficiary's response will be restarted upon issuance of the corrected notice;
 - (ii) In the later stages of an appeal (i.e., after issuance of a timely notice of hearing), TennCare or the MCC will immediately provide that service in the quantity and for the duration prescribed, subject to TennCare's or the MCC's right to reduce or terminate the service in accordance with the procedures required by this rule.

Subpart (ii) of part 3. of subparagraph (g) of paragraph (1) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (ii) which all read as follows:

- (ii) The provider will be informed that the service will be authorized if prescribed and found to be medically necessary; and

RULEMAKING HEARINGS

The introductory sentence of subparagraph (b) and part 1. of subparagraph (b) of paragraph (2) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new introductory sentence and new part 1. of subparagraph (b) which shall read as follows:

- (b) An enrollee's request for appeal, including oral or written expressions by the enrollee, or on his behalf, of dissatisfaction or disagreement with adverse actions that have been taken or are proposed to be taken, may not be denied, including instances in which:
 - 1. The enrollee lacks an order or prescription from a provider supporting the appeal, provided however, that the State may create an administrative grievance or other informal process to address appeals by enrollees without an order or prescription;

Subparagraph (e) of paragraph (2) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by deleting the last sentence so as amended subparagraph (e) shall read as follows:

- (e) To appeal in person, by telephone, or in writing. Reasonable accommodations shall be made for any person with disabilities who requires assistance with his/her appeal, such as an appeal by TDD services or other communication device for people with disabilities. Written requests for appeals made at county TDHS offices shall be stamped and immediately forwarded to the TennCare Bureau for processing and entry in the central registry.

The introductory paragraph to subparagraph (g) of paragraph (2) of rule 1200-13-14-.11 Appeal of Adverse Action Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new introductory paragraph which shall read as follows:

- (g) For ongoing services, have the right to continuation or reinstatement of services, pursuant to 42 C.F.R §§ 431.230-.231 as modified by this rule, pending appeal when the enrollee submits a timely appeal and timely request for such services. When an enrollee is so entitled to continuation or reinstatement of services, this right may not be denied for any reason, including:

Part 2. of subparagraph (b) of paragraph (3) of rule 1200-13-14-.11 Appeal of Adverse Action Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 2. which shall read as follows:

- 2. Medical opinions shall be evaluated in accordance with the *Grier Revised Consent Decree* and pursuant to TennCare Medical Necessity rule 1200-13-16. Reliance upon insurance industry guidelines or utilization control criteria of general application, without consideration of the individual enrollee's medical history, does not satisfy this requirement and cannot be relied upon to support an adverse action affecting TennCare services.

The introductory paragraph to subparagraph (e) of paragraph (3) of rule 1200-13-14-.11 Appeal of Adverse Action Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new introductory paragraph to subparagraph (e) which shall read as follows:.

RULEMAKING HEARINGS

- (e) Appeals When Enrollees Lack a Prescription. If a TennCare enrollee appeals an adverse action and TennCare determines that the basis of the appeal is that the enrollee lacks a prescription, TennCare may require the enrollee to exhaust the following administrative process before an appeal can proceed:

Part 1. of subparagraph (e) of paragraph (3) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding “ing” to the word “inform” in the first sentence so as amended part 1. shall read as follows:

1. TennCare will provide appropriate notice to the enrollee informing him/her that he/she will be required to complete an administrative process. Such administrative process requires the enrollee to contact the MCC to make an appointment with a provider to evaluate the request for the service. The MCC shall be required to make such appointment for the enrollee within a 3-week period or forty-eight (48) hours for urgent care from the date the enrollee contacts the MCC. Appeal timeframes will be tolled during this administrative process.

Part 10. of subparagraph (b) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new part 10. which shall read as follows:

10. Resolution, including a hearing with an ALJ if the case has not been previously resolved in favor of the enrollee, within ninety (90) days for standard appeals or thirty-one (31) days (or forty-five (45)) days when additional time is required to obtain an enrollee’s medical records) for expedited appeals, from the date of receipt of the appeal.

Subpart (i) of part 2. of subparagraph (f) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subpart (i) which shall read as follows:

- (i) TennCare shall attempt to complete such review within five (5) days of the issuance of the decision of the impartial hearing officer.

Part 2. of subparagraph (f) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is amended by adding a new subpart (ii) and relettering the present (ii) as (iii) and subsequent subparts relettered accordingly so as amended the new subpart (ii) shall read as follows:

- (ii) If TennCare is unable to take final agency action within five (5) days of the issuance of such decision, prompt corrective action by the fifth (5th) day is required, pursuant to rule 1200-13-14-.11(7)(f). However, the State shall not be prohibited from taking final agency action as expeditiously as possible and may immediately implement such final agency action to reduce, suspend, or terminate a service for which corrective action had been provided.

Subpart (iii) of part 1. of subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced by a new subpart (iii) which shall read as follows:

RULEMAKING HEARINGS

- (iii) Continuation of reinstatement of services within ten (10) days of MCC-initiated notice of action to terminate, suspend or reduce other ongoing services or prior to the date of action.

The introductory paragraph to part 5. of subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new introductory paragraph to part 5. which shall read as follows:

- 5. Resolution, including a hearing with an ALJ if the case has not been previously resolved in favor of the enrollee, of expedited appeals shall be provided within thirty-one (31) days or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received from the enrollee. TennCare is permitted to seek final agency review by the TennCare Commissioner or his designee in any appeal in which the enrollee prevails by a decision of an administrative law judge (ALJ) who is not an employee or official of the Department of Finance and Administration or Bureau of TennCare. Provided however, that if the enrollee prevails at any stage of the appeal process and TennCare seeks final agency review, the State may not await the conclusion of this review before providing prompt corrective action. If an enrollee makes a timely request for continuation or reinstatement of a disputed TennCare service pending appeal, receives the continued or reinstated service, and subsequently requests a continuance of the proceedings without presenting a compelling justification, the impartial hearing officer shall grant the request for continuance conditionally. The condition of such continuance is the enrollee's waiver of his right to continue receiving the disputed service pending a decision if:

Subparts (iii) and (vii) of part 6. of subparagraph (g) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced with new subparts (iii) and (vii) which shall read as follows:

- (iii) When coverage of a prescription drug or service is denied because the requested drug or service is not a category or class of drugs or services covered by TennCare;
- (vii) If TennCare had not paid for the type and amount of service for which continuation or reinstatement is requested prior to the appeal.

Subparagraph (h) of paragraph (4) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and replaced with a new subparagraph (h) which shall read as follows:

- (h) Expedited appeals.
 - 1. Expedited appeals of any action involving time-sensitive care must be resolved within thirty-one (31) days, or forty-five (45) days when additional time is required to obtain an enrollee's medical records, from the date the appeal is received.
 - 2. Care will only qualify as time-sensitive if a covered benefit has been delayed, denied, terminated or suspended; the service is not defined by TennCare policy as never constituting an emergency; and in the judgment of a member's treating physician or in the judgment of a prudent layperson that is not subsequently

RULEMAKING HEARINGS

overturned by written physician certification, waiting ninety (90) days to receive such benefit will result in:

- (i) Serious health problems or death;
- (ii) Serious dysfunction of a bodily organ or part; or
- (iii) Hospitalization.

3. MCCs shall complete reconsideration of expedited appeals within five (5) days, or within fourteen (14) days when additional time is required to obtain an enrollee's medical records, after receiving notification of the appeal. If the MCC does not complete reconsideration within these timeframes, the appeal shall not be automatically resolved in favor of the enrollee, provided that the missed deadline may be remedied early in the appeals process such that the appeal is resolved within ninety (90) days from the date the appeal is received.

Subparagraphs (a), (b), (d), and (f) of paragraph (7) of rule 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits are deleted in their entirety and replaced by new subparagraphs (a), (b), (d), and (f) which shall read as follows:

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-14-.11(1)(b)2. or as expeditiously as the enrollee's health condition requires. Failure by the MCCs to act upon a request for prior authorization within twenty-one (21) days shall result in an automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-14-.11(8).
- (b) MCCs must complete reconsideration of non-expedited appeals within fourteen (14) days. MCCs must complete reconsideration of expedited appeals involving time sensitive care within five (5) days, which shall be extended to fourteen (14) days if additional time is required to obtain an enrollee's medical records. Failure by the MCCs to meet these deadlines shall not result in an immediate resolution of the appeal in favor of the enrollee provided that the missed deadline may be remedied early in the appeals process such that the appeal is resolved within ninety (90) days from the date the appeal is received.
- (d) Failure to meet the ninety (90) day or thirty-one (31) day (extended to forty-five (45) calendar days when necessary to allow sufficient time to obtain the enrollee's medical records) deadline, as applicable, shall result in automatic TennCare coverage of the services at issue pending a decision by the impartial hearing officer, subject to the provisions of subparagraphs (7)(e) and (f) below, and to provisions relating to medical contraindication rule 1200-13-14-.11 (8). This conditional authorization will neither moot the pending appeal nor be evidence of the enrollee's satisfaction of the criteria for disposing of the case, but is simply a compliance mechanism for disposing of appeals within the required time frames. In the event that the appeal is ultimately decided against the enrollee, s/he shall not be liable for the cost of services provided during the period required to resolve the appeal. Notwithstanding, upon resolving an appeal against an enrollee, TennCare may immediately implement such decision, thereby reducing, suspending, terminating the provision or payment of the service.

RULEMAKING HEARINGS

- (f) Except upon a showing by an MCC of good cause requiring a longer period of time, within five (5) days of a decision in favor of an enrollee at any stage of the appeal process, the MCC take corrective action to implement the decision. For purposes of meeting the five (5) day time limit for corrective action, the MCC shall take steps necessary to ensure:
1. The enrollee's receipt of the services at issue, or acceptance and receipt of alternative services; or
 2. Reimbursement for the enrollee's cost of services, if the enrollee has already received the services at his/her own cost; or
 3. If the enrollee has already received the service, but has not paid the provider, that the enrollee is not billed for the service and that the enrollee's care is not jeopardized by non-payment.

In the event that a decision in favor of an enrollee is modified or overturned, TennCare shall possess the authority to immediately implement such decision, thereby reducing, suspending, or terminating the provision or payment of the service in dispute.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-24-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 17th day January 2007.

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

Part 80. of subparagraph (b) of paragraph (3) of rule 1200-13-14-.10 Exclusions is amended by adding subpart (iv) which shall read as follows:

- (iv) Any non-emergency out-of-state transportation, including airfare, that has not been prior authorized by the MCC. This includes the costs of transportation to obtain out-of-state care that has been authorized by the MCC. Out-of-state transportation must be prior authorized independently of out-of-state care.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-23-06)

RULEMAKING HEARINGS

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 Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 17th day January 2007.

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

Rules of The Tennessee Department Of Finance And AdministratioN are amended by adopting a new chapter 1200-13-16 Medical Necessity which shall read as follows:

CHAPTER 1200-13-16 MEDICAL NECESSITY

TABLE OF CONTENTS

1200-13-16-.01	Definitions
1200-13-16-.02	Introduction
1200-13-16-.03	The Scope of TennCare's Payment Obligation
1200-13-16-.04	Prior Authorization and Concurrent Utilization Review
1200-13-16-.05	Medical Necessity Criteria
1200-13-16-.06	Determination of Medical Necessity
1200-13-16-.07	Development of Evidence-Based Medical Necessity Guidelines
1200-13-16-.08	Right to Appeal a Medical Necessity Determination

1200-13-16-.01 DEFINITIONS

- (1) Adequate when applied to a medical item or service shall mean that the item or service, considered as part of a course of diagnosis or treatment, is sufficient, but not in excess of what is needed, for diagnosis or treatment of the particular medical condition. In order for a medical item or service to be determined adequate, such item or service must also satisfy the requirements at rule 1200-13-16-.05(5) regarding "safe and effective" and the requirements at rule 1200-13-16-.05(6) regarding "not experimental or investigational."

RULEMAKING HEARINGS

- (2) Behavioral Health Organization shall mean a type of managed care contractor approved by the Tennessee Department of Finance and Administration to deliver mental health and substance abuse services to TennCare Medicaid and TennCare Standard enrollees under the TennCare Program.
- (3) Benefits shall mean the defined package of health care services, including long term care services, for which an enrollee is eligible under the TennCare Program including applicable limits on such services.
- (4) Bureau Of TennCare shall mean the single State Medicaid agency which is responsible for the administration of the TennCare program.
- (5) Case-Control Study shall mean a study in which the study and control groups are selected on the basis of whether they have the disease (cases) rather than whether they have been exposed to a risk factor or clinical intervention. The design is therefore observational (as opposed to experimental) and retrospective (as opposed to prospective), with the clinical outcome already known at the outset. Principal disadvantages of this study design are that important confounding variables may be difficult to identify and adjust for, clinical outcome is already known and may influence the measurement and interpretation of data (observer bias), and participants may have difficulty in accurately recalling past medical history and previous exposures (recall bias).
- (6) Case Report shall mean to an uncontrolled observational study (prospective or retrospective) involving an intervention and an outcome in a single patient.
- (7) Case Series shall mean an uncontrolled study (prospective or retrospective) of a succession of consecutive patients who receive a particular intervention and are followed to observe their outcomes.
- (8) Clinical Trial shall mean a study that involves the administration of a test regimen to humans to evaluate its efficacy and safety.
- (9) CONTROL GROUP shall mean a group of patients that serves as the basis of comparison when assessing the effects of the intervention of interest that is given to the patients in the treatment group. Depending upon the circumstances of the trial, a control group may receive no treatment, a "usual" or "standard" treatment, or a placebo. To make the comparison valid, the composition of the control group should resemble that of the treatment group as closely as possible.
- (10) Controlled Clinical Trial shall mean a clinical trial in which a control group (which receives a standard intervention, which may be no treatment) is compared to a study group (which receives the intervention under study) in order to test a research hypothesis. A controlled clinical trial may or may not be randomized.
- (11) Controlled Cohort Study shall mean an observational study in which outcomes in a group of patients that received an intervention are compared with outcomes in a similar group i.e., the cohort, either contemporary or historical, of patients that did not receive the intervention. Cohort studies are more subject to systematic bias than randomized trials because treatments, risk factors, and other covariables may be chosen by patients or physicians on the basis of important (and often unrecognized) factors that are related to outcome. Therefore, investigators in controlled cohort studies may identify and correct for confounding variables, which are related factors that may be more directly responsible for clinical outcome than the intervention/exposure in question. For example, in an adjusted- (or matched-) cohort study, investigators identify (or make statistical adjustments to provide) a cohort group that has characteristics (e.g., age, gender, disease severity) that are as similar as possible to the group that experienced the intervention.

RULEMAKING HEARINGS

- (12) Convenience shall mean the degree to which an item or service is designed or recommended for the personal comfort or ease of an enrollee, caregiver, or provider. Alleviation of pain is not considered a matter of convenience.
- (13) Cost Effective when applied to a medical item or service shall mean that the benefits associated with item or service, considered as part of diagnosis or treatment, outweigh the costs associated with the item or service. When appropriate, such analysis may include assessment of aggregate, population-level data related to the costs or benefits of a medical item or service.
- (14) Cost-Effective Alternative Service shall mean a service that is not a covered service but that is approved by TennCare and CMS and provided at an MCC's discretion. TennCare enrollees are not entitled to receive these services. Cost-effective alternative services may be provided because they are either (1) alternatives to covered Medicaid services that, in the MCC's judgment, are cost-effective or (2) preventative in nature and offered to avoid the development of conditions that, in the MCC's judgment, would require more costly treatment in the future. Cost-effective alternative services need not be determined medically necessary except to the extent that they are provided as an alternative to covered Medicaid services. Even if medically necessary, a cost effective alternative service is not a covered service and is provided only at an MCC's discretion.
- (15) Covered Services shall mean medical items and services that are within an enrollee's scope of defined benefits, and not in excess of any applicable limits on such items or services. Covered services include long term care services for those enrollees eligible for long term care. With the exception of cost-effective alternative services and even in cases of emergency, only a covered service can be determined to be medically necessary for reimbursement purposes under the program.
- (16) Diagnosis shall mean the act or process of identifying or determining the nature and cause of a medical problem or condition through evaluation of patient history, examination, and review of laboratory data and other pertinent information. Diagnosis may include cost effective screening services provided in accordance with nationally accepted standards or guidelines developed or endorsed by respected medical organizations, such as the Centers for Disease Control and Prevention.
- (17) Effective describes the use of a medical item or service that produces the intended result and where the benefit of the medical item or service outweighs the adverse medical risks or consequences.
- (18) Eligible describes a person who has been determined to meet the eligibility criteria for the TennCare program.
- (19) Enrollee shall mean an individual who is eligible for and enrolled in the TennCare program.
- (20) Evidence-Based shall mean the ordered and explicit use of the best medical evidence available when making health care decisions.
- (21) Experimental Study shall mean a randomized controlled clinical trial.
- (22) Hierarchy Of Evidence shall mean a ranking of the weight given to medical evidence depending on objective indicators of its validity and reliability including the nature and source of the medical evidence, the empirical characteristics of the studies or trials upon which the medical evidence is

RULEMAKING HEARINGS

based, and the consistency of the outcome with comparable studies. The hierarchy in descending order, with Type I given the greatest weight is:

- (a) Type I: Meta-analysis done with multiple, well-designed controlled clinical trials;
- (b) Type II: One or more well-designed experimental studies;
- (c) Type III: Well-designed, quasi-experimental studies;
- (d) Type IV: Well-designed, non-experimental studies; and
- (e) Type V: Other medical evidence defined as evidence-based
 - 1. Clinical guidelines, standards or recommendations from respected medical organizations or governmental health agencies;
 - 2. Analyses from independent health technology assessment organizations; or
 - 3. Policies of other health plans.

(23) Home Health Services shall mean:

- (a) Any of the following services ordered by a treating physician and provided by a licensed home health agency pursuant to a plan of care at an enrollee's place of residence:
 - 1. Part-time or intermittent nursing services;
 - 2. Home health aide services; or
 - 3. Physical therapy, occupational therapy, or speech pathology and audiology services.
- (b) Medical supplies, equipment, and appliances ordered by a treating physician and suitable for use at an enrollee's place of residence.
- (c) Home health providers may only provide services that have been ordered by the treating physician and are pursuant to a plan of care and may not provide other services such as general child care services, cleaning services or preparation of meals. For this reason and to the extent that home services are provided to a person under 18 years of age, a responsible adult (other than the home healthcare provider) must be present at all times in the home during provision of home health services.

(24) Institutional Review Board shall mean a specifically constituted review body established or designated by an entity to protect the welfare of human subjects recruited to participate in biomedical or behavioral research.

(25) Long Term Care shall mean institutional services of a nursing facility, an intermediate care facility for the mentally retarded, or services provided through a Home and Community Based Services (HCBS) waiver program.

(26) MCC (Managed Care Contractor) shall mean:

RULEMAKING HEARINGS

- (a) A managed care organization, behavioral health organization, pharmacy benefits manager, and/or a dental benefits manager which has signed a TennCare Contract with the State and operates a provider network and provides covered health services to TennCare enrollees; or
 - (b) A pharmacy benefits manager, dental benefits manager, or behavioral health organization which subcontracts with a managed care organization or behavioral health organization to provide services; or
 - (c) A State government agency (i.e., Department of Children's Services and Division of Mental Retardation Services) that contracts with TennCare for the provision of services.
- (27) MCO (Managed Care Organization) shall mean an appropriately licensed Health Maintenance Organization (HMO) contracted with the Bureau of TennCare to manage the delivery, provide for access, contain the cost, and ensure the quality of specified covered medical and/or behavioral benefits to TennCare enrollee-members through a network of qualified providers.
- (28) Medicaid shall mean the federal- and state-financed, state-run program of medical assistance pursuant to Title XIX of the Social Security Act.
- (29) Medical Condition shall mean a disorder or an abnormal condition of the body and/or mind.
- (30) Medical Evidence shall mean Type I-IV analyses and studies and/or Type V evidence defined in rule 1200-13-16-.01(22).
- (31) Medical Item Or Service shall mean an item or service that is provided, ordered, or prescribed by a licensed health care provider and is primarily intended for a medical and/or behavioral purpose and designed to achieve that medical and/or behavioral purpose.
- (32) Medical Necessity shall mean the quality of being "medically necessary" as defined by Tennessee Code Annotated, Section 71-5-144, and applies to TennCare enrollees. Implementation of the term "medical necessity" is provided for in these regulations, consistent with the statutory provisions, which control in case of ambiguity.
- (33) Medical Necessity Determination a decision made by the Chief Medical Officer of the Bureau of TennCare or his or her clinical designee or by the Medical Director of one of its Managed Care Contractors or his or her clinical designee regarding whether a requested medical item or service satisfies the definition of medical necessity contained in Tennessee Code Annotated, Section 71-5-144 and these regulations as defined herein. Items or services that are not determined medically necessary shall not be paid for by TennCare.
- (34) Medical Necessity Guidelines shall mean evidence-based guidelines approved by the Chief Medical Officer of the Bureau of TennCare for the purpose of guiding medical necessity determinations for particular courses of diagnosis or treatment.
- (35) Medically Necessary is defined by Tennessee Code Annotated, Section 71-5-144, and shall describe a medical item or service that meets the criteria set forth in that statute. The term "medically necessary," as defined by Tennessee Code Annotated, Section 71-5-144, applies to TennCare enrollees. Implementation of the term "medically necessary" is provided for in these regulations, consistent with the statutory provisions, which control in case of ambiguity. No enrollee shall be entitled to receive and TennCare shall not be required to pay for any items or services that

RULEMAKING HEARINGS

fail fully to satisfy all criteria of “medically necessary” items or services, as defined either in the statute or in these regulations.

- (36) Medical Record shall mean all medical histories; records, reports and summaries; diagnoses; prognoses; records of treatment and medication ordered and given; x-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical documentation in written or electronic format; and analyses of such information.
- (37) Meta-Analysis shall mean systematic methods that use statistical techniques for combining results from different studies to obtain a quantitative estimate of the overall effect of a particular intervention or variable on a defined outcome. This combination may produce a stronger conclusion that can be provided by any individual study.
- (38) Non-Controlled Cohort Study shall mean a longitudinal study in which a group of people who share a common characteristic or experience are tracked over time with observation of outcomes within the group.
- (39) Non-Covered Service shall mean items and services that are not within the scope of defined benefits for which a beneficiary is eligible under TennCare, including cost-effective alternative services and medical items and services that are in excess of any applicable limits on such items or services that might otherwise be covered. With the exception of cost-effective alternative services, non-covered services under TennCare, including medical items and services in excess of benefit limits, are never to be paid for by TennCare, even if they otherwise would qualify as “medically necessary,” regardless of the medical circumstances involved.
- (40) Non- Experimental Study shall mean a study that is not randomized or controlled. Examples of non-experimental studies include non-controlled cohort studies, case series or case reports.
- (41) Non-Randomized Controlled Clinical Trial shall mean a controlled clinical trial that assigns patients to intervention and control groups using a method that does not involve randomization, e.g., at the convenience of the investigators or some other technique such as alternate assignment. Controlled trials that are not randomized are subject to a variety of biases, including selection bias, in which persons who volunteer or are assigned by investigators to study groups may differ in characteristics other than the intervention itself.
- (42) Off-Label Use shall mean the use of a drug or biological product that has been approved for marketing by the United States Food and Drug Administration (FDA) but is proposed to be used for other than the FDA-approved purpose.
- (43) Physician shall mean a person licensed pursuant to Chapter 6 or 9 of Title 63 of the Tennessee Code Annotated.
- (44) Quasi-Experimental Study shall mean a study in which the investigator lacks full control over randomization of subjects (lacks full control over the allocation and/or timing of intervention) but nonetheless conducts the study as if it were an experiment, allocating subjects to groups. Examples of quasi-experimental studies include non-randomized controlled clinical trials, controlled cohort studies, or case-control studies.
- (45) Randomized Controlled Clinical Trial shall mean a clinical trial in which participants are assigned in a randomized fashion to a study group (which receives the intervention) or a control group (which receives a standard treatment, which may be no intervention or a placebo). Randomiza-

RULEMAKING HEARINGS

tion enhances the comparability of the groups and provides a more valid basis for measuring statistical uncertainty. In this manner, differences in outcomes can be attributed to the intervention rather than to differences between the groups. Randomized controlled trials may or may not be blinded. In a blinded trial, the investigators, the subjects, or both (double-blinded study) are not told to which group they have been assigned, so that this knowledge will not influence their assessment of outcome.

- (46) Screen shall mean to test for or examine for the presence of a medical problem or condition in the absence of signs and symptoms of disease.
- (47) Study shall mean a careful examination or analysis applying scientific methodology and published in a peer-reviewed scientific journal or periodical.
- (48) TennCare shall mean the TennCare waiver demonstration program(s) and/or Tennessee's traditional Medicaid program.
- (49) Treating Physician Or Other Treating Health Care Provider shall mean a licensed physician practicing within the scope of his or her license or other licensed health care provider practicing within the scope of his or her license who has personally examined a particular TennCare enrollee and who has provided diagnostic or treatment services for that particular enrollee (whether or not those services were covered by TennCare) for purposes of treating or supporting the treatment of a known or suspected medical condition of that particular enrollee. The term excludes all other providers, including those who have evaluated a particular enrollee's medical condition primarily or exclusively for the purposes of supporting or participating in a decision regarding TennCare coverage.
- (50) Treatment shall mean the provision of medical items or services based on the recommendation of a treating physician or other treating health care provider practicing within the scope of his or her license.

1200-13-16-.02 INTRODUCTION

The medical necessity standard set forth in the TennCare reform statute and in these regulations shall govern the delivery of all medical items and services to all enrollees or classes of beneficiaries in the TennCare program. The definition of medical necessity will be implemented consistent with federal law, including Early Periodic Screening Diagnosis and Treatment (EPSDT) requirements, and within the state's authority to define what constitutes a medically necessary Medicaid service. The state recognizes that current EPSDT requirements include coverage of "necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects and physical and mental illness and conditions discovered by screening services, whether or not such services are covered under the state plan".

1200-13-16-.03 THE SCOPE OF TENNCARE'S PAYMENT OBLIGATION

- (1) Tennessee has an obligation to provide payment on behalf of TennCare enrollees for and only for (a) covered services (b) that are medically necessary.
- (2) No TennCare enrollee is entitled to receive (a) non-covered services including cost effective alternative services or (b) covered services that are not medically necessary.

RULEMAKING HEARINGS

- (3) In the context of prior authorization or concurrent review:
- (a) When a covered service has been designated by the Bureau of TennCare or a managed care contractor as requiring prior approval, no TennCare enrollee is entitled to receive covered services until the favorable conclusion of the prior approval process.
 - (b) When a covered service has been designated by the Bureau of TennCare or a managed care contractor as requiring concurrent review, the enrollee may receive covered services until the expiration of any existing authorization for treatment or until a determination that such service is no longer medically necessary. No TennCare enrollee is entitled to receive covered services subject to concurrent review beyond the expiration of any existing authorization for treatment unless such authorization has been extended through the concurrent review process. For TennCare enrollees under 21, upon receipt of a timely filed request to continue authorization of a service originally prescribed on an ongoing basis, such authorization is automatically extended pending completion of concurrent review. A request to continue authorization shall be timely if received by the MCC prior to the expiration of the current authorization.

1200-13-16-.04 PRIOR AUTHORIZATION AND CONCURRENT UTILIZATION REVIEW

- (1) The Bureau of TennCare may identify certain items or services that, for purposes of determining medical necessity, shall require prior authorization and/or concurrent review.
- (a) Managed care contractors and/or a state agency performing the function of a managed care contractor shall implement prior authorization and/or concurrent review procedures for all items or services specified by the Bureau of TennCare and, at their individual discretion, may require prior authorization and/or concurrent review for additional non-emergency medical items or services not specified by the Bureau of TennCare.
 - (b) Managed care contractors and/or a state agency performing the function of a managed care contractor will inform their enrollees and their participating providers which medical items or services require prior authorization and/or concurrent review. Such notice need not be individualized in nature. Thus, failure to provide individualized prior authorization notices does not invalidate the requirement for prior authorization and/or concurrent review. Notice to providers shall be in writing and such notice requirement may be satisfied by publishing notice on the internet.

1200-13-16-.05 MEDICAL NECESSITY CRITERIA

- (1) To be medically necessary, a medical item or service must satisfy each of the following criteria:
- (a) It must be recommended by a licensed physician who is treating the enrollee or other licensed healthcare provider practicing within the scope of his or her license who is treating the enrollee;
 - (b) It must be required in order to diagnose or treat an enrollee's medical condition;
 - (c) It must be safe and effective;

RULEMAKING HEARINGS

- (d) It must not be experimental or investigational; and
 - (e) It must be the least costly alternative course of diagnosis or treatment that is adequate for the enrollee's medical condition.
- (2) The convenience of an enrollee, the enrollee's family, the enrollee's caregiver, or a provider, shall not be a factor or justification in determining that a medical item or service is medically necessary.
- (3) Services required to diagnose an enrollee's medical condition.
- (a) Provided that all the other medical necessity criteria are satisfied, services required to diagnose an enrollee's medical condition may include screening services, as appropriate.
 - (b) Screening services are "appropriate" if they meet one of the following three categories:
 - 1. Services required to achieve compliance with federal statutory or regulatory mandates under the EPSDT program.
 - 2. Newborn testing for metabolic/genetic defects as set forth in Tennessee Code Annotated, Section 68-5-401; or
 - 3. Pap smears, mammograms, prostate cancer screenings, colorectal cancer screenings, and screening for tuberculosis and sexually transmitted diseases, including HIV, in accordance with nationally accepted clinical guidelines adopted by the Bureau of TennCare.
 - (c) Unless specifically provided for herein, other screening services are "appropriate" only if they satisfy each of the following criteria:
 - 1. The Bureau of TennCare, a managed care contractor, or a state agency performing the functions of a managed care contractor determines that the screening services are cost effective;
 - 2. The screening must have a significant probability of detecting the disease;
 - 3. The disease for which the screening is conducted must have a significant detrimental effect on the health status of the affected person;
 - 4. Tests must be available at a reasonable cost;
 - 5. Evidence-based methods of treatment must be available for treating the disease at the disease stage which the screening is designed to detect; and
 - 6. Treatment in the asymptomatic phase must yield a therapeutic result.
 - (d) Services required to diagnose an enrollee's medical condition include diagnostic services mandated by EPSDT requirements.
- (4) Services required to treat an enrollee's medical condition. Provided that all other elements of medical necessity are satisfied, treatment of an enrollee's medical condition may only include:

RULEMAKING HEARINGS

- (a) Medical care that is essential in order to treat a diagnosed medical condition, the symptoms of a diagnosed medical condition, or the effects of a diagnosed medical condition and which, if not provided, would have a significant and demonstrable adverse impact on quality or length of life;
- (b) Medical care that is essential in order to treat the significant side effects of another medically necessary treatment (e.g., nausea medications for side effects of chemotherapy);
- (c) Medical care that is essential, based on an individualized determination of a particular patient's medical condition, to avoid the onset of significant health problems or significant complications that, with reasonable medical probability, will arise from that medical condition in the absence of such care;
- (d) Home health services
 - 1. Home health aide services are necessary to treat an enrollee's medical condition only if such services;
 - (i) Are of a type that the enrollee cannot perform for himself or herself;
 - (ii) Are of a type for which there is no caregiver able to provide the services; and
 - (iii) Consist of hands-on care of the enrollee.
 - 2. All other home health services are necessary to treat an enrollee's medical condition only if they are ordered by the treating physician, are pursuant to a plan of care, and meet the requirements described at subparagraph (a), (b), or (c) immediately above or (f) immediately below. Services that do not meet these requirements, such as general child care services, cleaning services or preparation of meals, are not required to treat an enrollee's medical condition and will not be provided. For this reason, to the extent that home health services or private duty nursing services are provided to a person under 18 years of age, a responsible adult (other than the home healthcare provider) must be present at all times in the home during provision of home health services.
 - 3. Private Duty Nursing services are separate services from home health services. When private duty nurses are authorized by the MCC to provide home health aide services pursuant to rule 1200-13-13-.04(14)(c) or 1200-13-14-.04(14)(c), these services must meet the requirements described at part 1. immediately above.
 - 4. Home health services may not be denied on any of the following grounds:
 - (i) Because such services are medically necessary on a long term basis or are required for the treatment of a chronic condition;
 - (ii) Because such services are deemed to be custodial care;
 - (iii) Because the enrollee is not homebound;
 - (iv) Because private insurance utilization guidelines, including but not limited to those published by Milliman & Robertson or developed in-house by TennCare managed care contractors, do not authorize such health care as referenced above;

RULEMAKING HEARINGS

- (v) Because the enrollee does not meet coverage criteria for Medicare or some other health insurance program, other than TennCare;
- (vi) Because the home health care that is needed does not require or involve a skilled nursing service;
- (vii) Because the care that is required involves assistance with activities of daily living;
- (viii) Because the home health services that is needed involves home health aide services;
- (ix) Because of a numerical limit unrelated to medical necessity;
- (x) Because the enrollee meets the criteria for receiving Medicaid nursing facility services; or
- (xi) On the grounds that such medically necessary home health care is not a covered service.

(e) Personal Care Services

1. Personal care services are necessary to treat an enrollee's medical condition only if such services are ordered by the treating physician pursuant to a plan of care to address a medical condition identified as a result of an EPSDT screening. Personal care services must be supervised by a registered nurse and delivered by a home health aide. In addition the services must:
 - (i) Be of a type that the enrollee cannot perform for himself or herself;
 - (ii) Be of a type for which there is no caregiver able to provide the services; and
 - (iii) Consist of hands-on care of the enrollee.
2. Services that do not meet these requirements, such as general child care services, cleaning services or preparation of meals, are not required to treat an enrollee's medical condition and will not be provided. For this reason, to the extent that personal care services are provided to a person under 18 years of age, a responsible adult (other than the home health aide) must be present at all times during provision of personal care services.

(f) The following preventive services:

1. Prenatal and maternity care delivered in accordance with standards endorsed by the American College of Obstetrics and Gynecology;
2. Family planning services;
3. Age-appropriate childhood immunizations delivered according to guidelines developed by the Advisory Committee on Immunization Practices;

RULEMAKING HEARINGS

4. Health education services for TennCare-eligible children under age 21 in accordance with 42 U.S.C. Section 1396d;
 5. Other preventive services that are required to achieve compliance with federal statutory or regulatory mandates under the EPSDT program; or
 6. Other preventive services that have been endorsed by the Bureau of TennCare or a particular managed care contractor as representing a cost effective approach to meeting the medically necessary health care needs of an individual enrollee or group of enrollees.
- (5) Safe and effective.
- (a) To qualify as being safe and effective, the type, scope, frequency, intensity, and duration of a medical item or service must be consistent with the symptoms or confirmed diagnosis and treatment of the particular medical condition. The type, scope, frequency, intensity, and duration of a medical item or service must not be in excess of the enrollee's needs.
 - (b) The reasonably anticipated medical benefits of the item or service must outweigh the reasonably anticipated medical risks based on:
 1. The enrollee's condition; and
 2. The weight of medical evidence as ranked in the hierarchy of evidence in rule 1200-13-16-.01(22) and as applied in rule 1200-13-16-.06(6) and (7).
- (6) Not experimental or investigational.
- (a) A medical item or service is experimental or investigational if there is inadequate empirically-based objective clinical scientific evidence of its safety and effectiveness for the particular use in question. This standard is not satisfied by a provider's subjective clinical judgment on the safety and effectiveness of a medical item or service or by a reasonable medical or clinical hypothesis based on an extrapolation from use in diagnosing or treating another condition. However, extrapolation from one population group to another (e.g. from adults to children) may be appropriate. For example, extrapolation may be appropriate when the item or service has been proven effective, but not yet tested in the population group in question. This standard may only be satisfied if the weight of medical evidence supports the safety and efficacy of the medical item or service in question as ranked in the hierarchy of evidence in rule 1200-13-16-.01(22) and as applied in rule 1200-13-16-.06(6) and (7).
 - (b) Subject to the provisions set forth in subparagraph (c) immediately below, use of a drug or biological product that has not been approved for marketing under a new drug application or abbreviated new drug application by the United States Food and Drug Administration (FDA) is deemed experimental.
 - (c) Use of a drug or biological product that has been approved for marketing by the FDA but is proposed to be used for other than the FDA-approved purpose (*i.e.*, off-label use) is experimental and not medically necessary unless the off-label use is shown to be widespread and all other medical necessity criteria as set forth in rule 1200-13-16-.05(1)((a), (b), (c), and (e)) are satisfied.

RULEMAKING HEARINGS

- (d) Items or services provided or performed for research purposes are experimental and not medically necessary. Evidence of such research purposes may include written protocols in which evaluation of the safety and efficacy of the service is a stated objective or when the ability to perform the service is contingent upon approval from an Institutional Review Board, or a similar body.
 - (e) Unless a proposed diagnosis or treatment independently satisfies the criteria for “not experimental or investigational”, and satisfies all other medical necessity criteria, the fact that an experimental/investigational treatment is the only available treatment for a particular medical condition or that the patient has tried other more conventional therapies without success does not qualify the service for coverage.
- (7) The least costly alternative course of diagnosis or treatment that is adequate for the medical condition of the enrollee.
- (a) Where there are less costly alternative courses of diagnosis or treatment that are adequate for the medical condition of the enrollee, more costly alternative courses of diagnosis or treatment are not medically necessary, even if the less costly alternative is a non-covered service under TennCare.
 - (b) Where there are less costly alternative settings in which a course of diagnosis or treatment can be provided that is adequate for the medical condition of the enrollee, the provision of services in a setting more costly to TennCare is not medically necessary.
 - (c) If a medical item or service can be safely provided to a person in an outpatient setting for the same or lesser cost than providing the same item or service in an inpatient setting, the provision of such medical item or service in an inpatient setting is not medically necessary and TennCare shall not provide payment for that inpatient service.
 - (d) An alternative course of diagnosis or treatment may include observation, lifestyle, or behavioral changes or, where appropriate, no treatment at all when such alternative is adequate for the medical condition of the enrollee.

The following is a non-exhaustive illustrative set of circumstances that could fit within the provisions of rule 1200-13-16-.05(7)(d). These examples may or may not be appropriate, depending on an individualized medical assessment of a patient’s unique circumstances:

1. Rest, fluids and over-the-counter medication for symptomatic relief might be recommended for a viral respiratory infection, as opposed to a prescription for an antibiotic;
 2. Rest, ice packs and/or heat for acute, uncomplicated, mechanical low back pain along with over-the-counter pain medicine, as opposed to x-rays and a prescription for analgesics;
 3. Clear liquids and advance diet as tolerated for uncomplicated, acute gastroenteritis, as opposed to prescription antidiarrheals.
- (8) The Bureau of TennCare may make limited special exceptions to the medical necessity requirements described at rule 1200-13-16-.05(1) for particular items or services, such as long term care, or such as may be required for compliance with federal law.

RULEMAKING HEARINGS

- (9) Transportation services that meet the requirements described at rule 1200-13-13-.04 and 1200-13-14-.04 shall be deemed to be medically necessary if provided in connection with medically necessary items or services.

1200-13-16-.06 DETERMINATION OF MEDICAL NECESSITY

- (1) The Bureau of TennCare is ultimately responsible for determining whether specific medical items and/or services under TennCare (a) are covered services and (b) are medically necessary. In the vast majority of cases, medical necessity determinations will be made as part of a prior authorization or concurrent review process. However, less frequently such determinations may be made retrospectively in the course of the investigation of unusual billing or practice patterns. The Bureau of TennCare may delegate covered services and/or medical necessity decisions to managed care contractors. All medical necessity decisions must be made by licensed medical staff with appropriate clinical expertise. The Bureau may review such decisions as a part of routine monitoring or as a result of an enrollee appeal or provider complaint and may overturn such decisions if not made in accordance with these rules.
- (2) Non-covered services, including medical items and services in excess of benefit limits, are never to be paid for by TennCare, even if they otherwise would qualify as “medically necessary,” regardless of the medical circumstances involved, unless an MCC, in its discretion, provides a cost effective alternative service.
- (3) If, after an enrollee is provided the opportunity by the State or managed care contractor to consult with a physician, a medical item or service has not been recommended, ordered or prescribed by a treating physician or other treating health care provider practicing within the scope of his or her license, it is not medically necessary and is not covered under TennCare.
- (4) In making a medical necessity determination, TennCare or its designee will consider a recommendation, order, or prescription for a covered medical item or service from a treating physician or other treating health care provider.
 - (a) A recommendation, order or prescription from a treating physician or other treating health care professional shall be based on a thorough, up-to-date assessment of the enrollee’s medical condition, with careful consideration of all required medical necessity criteria as defined by statute and by these regulations.
 - (b) The managed care contractor will evaluate the information provided by the treating provider in support of a recommendation, order or prescription for a covered service. If the information or opinion of the treating provider deviates significantly from that of the MCC, the MCC will request further explanation from the treating provider. Upon request from the enrollee’s MCC or the Bureau of TennCare for purposes of making an individualized medical necessity determination, the treating physician or other treating health care provider shall provide information and/or documentation supporting the need for the recommended medical item or service in order to diagnose or treat the enrollee’s medical condition.
 - (c) In addition, when requested, the treating physician or other treating health care provider will provide a written explanation as to why a proposed less costly alternative is not believed to be adequate to address the enrollee’s medical condition.

RULEMAKING HEARINGS

- (d) Information/documentation requested by the managed care contractor or the Bureau of TennCare for purposes of making a medical necessity determination will be provided free of charge.
- (e) Providers who fail to provide information/documentation requested by the managed care contractor or the Bureau of TennCare for purposes of making a medical necessity determination shall not be entitled to payment for provision of the applicable medical item or service. In such instances, providers may not seek payment from patients or third parties for items or services denied payment.
- (5) The treating physician's conclusory statements, without more, are not binding on the State.
- (6) In evaluating the request/recommendation of the treating physician or other treating health care provider, a managed care contractor and/or the Bureau of TennCare shall use the hierarchy of evidence to determine if the requested item or service is safe and effective, as referenced at rule 1200-13-16-.05(5) and (6)(a), for the enrollee by classifying the item or service as having an A, B, C or D level of supporting evidence. In classifying the item or service as having A, B, C or D level of supporting evidence, extrapolation from one population group to another (e.g. from adults to children) may be appropriate. For example, extrapolation may be appropriate when the item or service has been proven effective, but not yet tested in the population group in question.
 - (a) "A" level evidence: Shows the requested medical item or service is a proven benefit to the enrollee's condition as demonstrated by strong scientific literature and well-designed clinical trials such as a Type I evidence or multiple Type II evidence or combinations of Type II, III, or IV evidence with consistent results. An "A" rating cannot be based on Type III, Type IV, or Type V evidence alone.
 - (b) "B" level evidence: Shows the requested medical item or service has some proven benefit to the enrollee's condition as demonstrated by:
 - 1. Multiple Type II or III evidence or combinations of Type II, III, or IV evidence with generally consistent findings of effectiveness and safety. A "B" rating cannot be based on Type IV or V evidence alone; or
 - 2. Singular Type II, III, IV, or V evidence when consistent with a Bureau of TennCare endorsed or established evidence-based clinical guidelines.
 - (c) "C" level evidence: Shows only weak and inconclusive evidence regarding safety and/or efficacy for the enrollee's condition such as:
 - 1. Type II, III, or IV evidence with inconsistent findings; or
 - 2. Only Type V evidence is available.
 - (d) "D" level evidence: Is not supported by any evidence regarding safety and efficacy for the enrollee's condition.
- (7) Application of the Hierarchy of Evidence. After classifying the available evidence, the Bureau of TennCare or a managed care contractor will approve items or services in the following manner:

RULEMAKING HEARINGS

- (a) Medical items or services with supporting “A” and “B” rated evidence will be considered safe and effective if the item or service does not place the enrollee at a greater risk of morbidity and mortality than an equally effective alternative treatment.
 - (b) Medical items or services with “C” rated evidence or a physician’s clinical judgment that is not supported by objective evidence, will be considered safe and effective only if the provider shows that the requested service is the optimal intervention for meeting the enrollee’s specific condition or treatment needs, and:
 - 1. Does not place the enrollee at greater risk of morbidity or mortality than an equally effective alternative treatment; and
 - 2. Is the next reasonable step for the enrollee in light of the enrollee’s past medical treatment.
 - (c) Medical items or services with “D” rated evidence will not be considered safe and effective and; therefore, will not be determined medically necessary.
- (8) The Bureau of TennCare or the managed care contractor’s classification of available medical evidence as described at rule 1200-13-16-.01(22) and any resulting approval of items or services as described at rule 1200-13-16-.06(6) and (7) shall be binding on TennCare enrollees and providers.
- (9) The managed care contractor or the Bureau of TennCare will rely upon all relevant information in making a medical necessity determination. Such determinations must be individualized and made in the context of medical /behavioral history information included in the enrollee’s medical record.
- (10) The fact that a particular medical item or service has been covered in one instance does not make such item or service medically necessary in any other case, even if such case is similar in certain respects to the situation in which the item or service was determined to be medically necessary.
- (11) Items or services that are not determined medically necessary, as defined by the statute or by these regulations, shall not be paid for by TennCare.

1200-13-16-.07 DEVELOPMENT OF EVIDENCE-BASED MEDICAL NECESSITY GUIDELINES

- (1) In recognition of the ever-evolving nature of the study and practice of medicine, the growing body of evidence-based medical practice guidelines, the opportunity to achieve cost-containment objectives consistent with quality care, and the existence of practice variability among health care practitioners, the Bureau of TennCare may, on occasion, endorse or establish medical necessity guidelines that shall guide determinations of medical necessity for specific items or services across all managed care contractors and State agencies performing the function of managed care contractors.
- (2) Such guidelines shall be established with input from managed care contractors, practicing physicians and other health care providers, shall be based on Type I or II evidence and shall take into consideration all criteria of the statutory definition of medical necessity.

RULEMAKING HEARINGS

- (3) The Bureau of TennCare will disseminate approved evidence-based medical necessity guidelines to its contractors and the provider community.
- (4) The Bureau of TennCare will implement a continuous medical review process to ensure that approved evidence-based medical necessity guidelines are responsive to advances in medical knowledge and technology.

1200-13-16-.08 RIGHT TO APPEAL A MEDICAL NECESSITY DETERMINATION

An enrollee may appeal a determination that a medical item or service that is within the enrollee's scope of covered benefits is not medically necessary. In all such appeals, the burden of proof will rest with the enrollee at all stages.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-25-06)

RULEMAKING HEARINGS

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Care Facilities Conference Room on the fifth floor of the Heritage Place Metrocenter located at 227 French Landing, Suite 501, Nashville, TN at 11:00 a.m. (CST) on the 17th day of January, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, Fifth Floor, Heritage Place Metrocenter, 227 French Landing, Suite 501, Nashville, TN 37243, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 227 French Landing, Suite 501, Heritage Place Metrocenter, Nashville, TN 37243, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

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

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

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

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

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

**CHAPTER 1200-8-15
STANDARDS FOR RESIDENTIAL HOSPICES**

**CHAPTER 1200-8-17
ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL REHABILITATION TREATMENT FACILITIES**

**CHAPTER 1200-8-18
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL TREATMENT FACILITIES**

RULEMAKING HEARINGS

**CHAPTER 1200-8-19
ALCOHOL AND OTHER DRUGS OF ABUSE DUI SCHOOL FACILITIES**

**CHAPTER 1200-8-20
ALCOHOL AND OTHER DRUGS OF ABUSE PREVENTION PROGRAM FACILITIES**

**CHAPTER 1200-8-21
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL NARCOTIC TREATMENT FACILITIES**

**CHAPTER 1200-8-22
ALCOHOL AND OTHER DRUGS OF ABUSE HALFWAY HOUSE TREATMENT FACILITIES**

**CHAPTER 1200-8-23
ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL DETOXIFICATION TREATMENT FACILITIES**

**CHAPTER 1200-8-24
STANDARDS FOR BIRTHING CENTERS**

**CHAPTER 1200-8-25
STANDARDS FOR ASSISTED-CARE LIVING FACILITIES**

**CHAPTER 1200-8-26
STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING HOME HEALTH SERVICES**

**CHAPTER 1200-8-27
STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING HOSPICE SERVICES**

**CHAPTER 1200-8-28
STANDARDS FOR HIV SUPPORTIVE LIVING FACILITIES**

**CHAPTER 1200-8-29
STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT**

**CHAPTER 1200-8-32
STANDARDS FOR END STAGE RENAL DIALYSIS CLINICS**

**CHAPTER 1200-8-34
STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING PROFESSIONAL SUPPORT SERVICES**

**CHAPTER 1200-8-35
STANDARDS FOR OUTPATIENT DIAGNOSTIC CENTERS**

AMENDMENTS

Rule 1200-8-1-.04, Administration, is amended by deleting subparagraph (10)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (10)(c), so that as amended, the new subparagraphs (10)(b) and (10)(c) shall read:

RULEMAKING HEARINGS

- (10) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (10) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 71-6-121.

Rule 1200-8-1-.06, Basic Hospital Functions, is amended by deleting parts (1)(b)3 and (1)(b)4 in their entirety and substituting instead the following language, and is further amended by adding the following language as new part (1)(b)5, and is further amended by deleting part (3)(b)3 in its entirety and substituting instead the following language, so that as amended, the new parts (1)(b)3, (1)(b)4, (1)(b)5, and (3)(b)3 shall read:

- (1) (b) 3. All medical and surgical services performed in the hospital are evaluated as to the appropriateness of diagnosis and treatment;
- (1) (b) 4. The competency of all staff is evaluated at least annually; and
- (1) (b) 5. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program, central venous catheter insertion process, and influenza vaccination program.
- (3) (b) 3. Written procedures governing the use of aseptic techniques and procedures in all areas of the hospital to include adoption of a standardized central venous catheter insertion process which shall contain these key components:
 - (i) Hand hygiene (as defined in 1200-8-1-.06(3)(g));
 - (ii) Maximal barrier precautions to include the use of sterile gowns, gloves, mask and hat, and large drape on patient;
 - (iii) Chlorhexidine skin antisepsis;
 - (iv) Optimal site selection;
 - (v) Daily review of line necessity; and
 - (vi) Development and utilization of a procedure checklist;

Authority: T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

RULEMAKING HEARINGS

Rule 1200-8-1-.06, Basic Hospital Functions, is amended by deleting subparagraph (3)(f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3)(f) shall read:

- (3) (f) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases thru adherence to a hand hygiene program which shall include:
1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;
 2. Use of gloves during each patient contact with blood or other potentially infectious materials, mucous membranes, and non-intact skin could occur and changed before and after each patient contact;
 3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and
 4. Health care worker education programs which may include:
 - (i) Types of patient care activities that can result in hand contamination;
 - (ii) Advantages and disadvantages of various methods used to clean hands;
 - (iii) Potential risks of health care workers colonization or infection caused by organisms acquired from patients; and
 - (iv) Morbidity, mortality, and costs associated with health care associated infections.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

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

- (3) (f) The facility shall have an annual influenza vaccination program which shall include at least:
1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;
 2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;
 3. Education of all direct care personnel about the following:
 - (i) Flu vaccination,
 - (ii) Non-vaccine control measures, and

RULEMAKING HEARINGS

- (iii) The diagnosis, transmission, and potential impact of influenza;
- 4. An annual evaluation of the influenza vaccination program and reasons for non-participation.
- 5. The requirements to complete vaccinations or declination statements are suspended by the Medical Director in the event of a vaccine shortage.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-3-511, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

Rule 1200-8-2-.04, Administration, is amended by adding the following language as new paragraph (9), so that as amended, the new paragraph (9) shall read:

- (9) All Health care facilities licensed pursuant to T.C.A. §68-11-201, et. seq. shall post on a sign no smaller than eight and one-half inches (8½”) in width and eleven inches (11”) in height the following in the main public entrance:
 - (a) a statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-234, and 71-6-121.

Rule 1200-8-6-.01, Definitions, is amended by adding the following language as new paragraph (37) and re-numbering the remaining paragraphs appropriately, so that as amended, the new paragraph (37) shall read:

- (37) Medical Equipment. Equipment used for the diagnosis, treatment and monitoring of patients, including, but not limited to, oxygen care equipment and oxygen delivery systems, enteral and parenteral feeding pumps, and intravenous pumps.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.

Rule 1200-8-6-.04, Administration, is amended by adding the following language as new paragraphs (19) and (20), so that as amended, the new paragraphs (19) and (20) shall read:

- (19) The nursing home shall carry out the following functions, all of which shall be documented in a written medical equipment management plan:
 - (a) Develop and maintain a current itemized inventory of medical equipment used in the facility, that is owned or leased by the operator of the facility;
 - (b) Develop and maintain a schedule for the maintenance, inspection and testing of medical equipment according to manufacturers' recommendations or other generally accepted standards. The schedule shall include the date and time such maintenance, inspection and

RULEMAKING HEARINGS

testing was actually performed, and the name of the individual who performed such tasks;
and

- (c) Ensure maintenance, inspection and testing were conducted by facility personnel adequately trained in such procedures or by a contractor qualified to perform such procedures.
- (20) All health care facilities licensed pursuant to T.C.A. §68-11-201, et. seq. shall post on a sign no smaller than eight and one-half inches (8½”) in width and eleven inches (11”) in height the following in the main public entrance:
- (a) a statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-225, 68-11-256, 68-11-906, and 71-6-121.

Rule 1200-8-6-.06, Basic Services, is amended by deleting parts (1)(b)2 and (1)(b)3 in their entirety and substituting instead the following language, and is further amended by adding the following language as new part (1)(b)4, so that as amended, the new parts (1)(b)2, (1)(b)3, and (1)(b)4 shall read:

- (1) (b) 2. Nosocomial infections and medication therapy are evaluated;
- (1) (b) 3. All services performed in the facility are evaluated as to the appropriateness of diagnosis and treatment; and
- (1) (b) 4. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

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

Rule 1200-8-6-.06, Basic Services, is amended by deleting subparagraph (3)(f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3)(f) shall read:

- (3) (f) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases thru adherence to a hand hygiene program which shall include:
 - 1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;
 - 2. Use of gloves during each patient contact with blood or other potentially infectious materials, mucous membranes, and non-intact skin could occur and changed before and after each patient contact;
 - 3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and
 - 4. Health care worker education programs which may include:

RULEMAKING HEARINGS

- (i) Types of patient care activities that can result in hand contamination;
- (ii) Advantages and disadvantages of various methods used to clean hands;
- (iii) Potential risks of health care workers colonization or infection caused by organisms acquired from patients; and
- (iv) Morbidity, mortality, and costs associated with health care associated infections.

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

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

- (3) (i) The facility shall have an annual influenza vaccination program which shall include at least:
 - 1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;
 - 2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;
 - 3. Education of all direct care personnel about the following:
 - (i) Flu vaccination,
 - (ii) Non-vaccine control measures, and
 - (iii) The diagnosis, transmission, and potential impact of influenza;
 - 4. An annual evaluation of the influenza vaccination program and reasons for non-participation.
 - 5. The requirements to complete vaccinations or declination statements are suspended by the Medical Director in the event of a vaccine shortage.

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

Rule 1200-8-10-.04, Administration, is amended by deleting subparagraph (24)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (24)(c), so that as amended, the new subparagraphs (24)(b) and (24)(c) shall read:

- (24) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

RULEMAKING HEARINGS

- (24) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 71-6-121.

Rule 1200-8-11-.04, Administration, is amended by deleting subparagraph (7)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (7)(c), so that as amended, the new subparagraphs (7)(b) and (7)(c) shall read:

- (7) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (7) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.

Rule 1200-8-15-.04, Administration, is amended by deleting subparagraph (18)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (18)(c), so that as amended, the new subparagraphs (18)(b) and (18)(c) shall read:

- (18) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (18) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.

RULEMAKING HEARINGS

Rule 1200-8-17-.04, Administration, is amended by deleting subparagraph (7)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (7)(c), so that as amended, the new subparagraphs (7)(b) and (7)(c) shall read:

- (7) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (7) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-18-.04, Administration, is amended by deleting subparagraph (7)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (7)(c), so that as amended, the new subparagraphs (7)(b) and (7)(c) shall read:

- (7) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (7) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-19-.04, Administration, is amended by deleting subparagraph (6)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (6)(c), so that as amended, the new subparagraphs (6)(b) and (6)(c) shall read:

- (6) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (6) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

RULEMAKING HEARINGS

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11”) in width and seventeen inches (17”) in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-20-.04, Administration, is amended by deleting subparagraph (6)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (6)(c), so that as amended, the new subparagraphs (6)(b) and (6)(c) shall read:

- (6) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (6) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½”) in width and eleven inches (11”) in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11”) in width and seventeen inches (17”) in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-21-.04, Administration, is amended by deleting subparagraph (6)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (6)(c), so that as amended, the new subparagraphs (6)(b) and (6)(c) shall read:

- (6) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (6) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½”) in width and eleven inches (11”) in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11”) in width and seventeen inches (17”) in height.

Authority: T.C.A. §§4-5-202 through 4-5-206, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-210, 68-11-222, and 71-6-121.

Rule 1200-8-22-.04, Administration, is amended by deleting subparagraph (7)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (7)(c), so that as amended, the new subparagraphs (7)(b) and (7)(c) shall read:

RULEMAKING HEARINGS

- (7) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (7) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-23-.04, Administration, is amended by deleting subparagraph (7)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (7)(c), so that as amended, the new subparagraphs (7)(b) and (7)(c) shall read:

- (7) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (7) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202 through 4-5-206, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-24-.04, Administration, is amended by deleting subparagraph (11)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (11)(c), so that as amended, the new subparagraphs (11)(b) and (11)(c) shall read:

- (11) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (11) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

RULEMAKING HEARINGS

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-25-.04, Administration, is amended by deleting subparagraph (8)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (8)(c), and is further amended by adding the following language as new paragraphs (9), (10), and (11), so that as amended, the new subparagraphs (8)(b) and (8)(c) and new paragraphs (9),(10), and (11) shall read:

- (8) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (8) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

- (9) The facility shall have an annual influenza vaccination program which shall include at least:
 - (a) The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;
 - (b) A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;
 - (c) Education of all direct care personnel about the following:
 - 1. Flu vaccination,
 - 2. Non-vaccine control measures, and
 - 3. The diagnosis, transmission, and potential impact of influenza;
 - (d) An annual evaluation of the influenza vaccination program and reasons for non-participation.
 - (e) The requirements to complete vaccinations or declination statements are suspended by the administrator in the event of a vaccine shortage.
- (10) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases thru adherence to a hand hygiene program which shall include:
 - (a) Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

RULEMAKING HEARINGS

- (b) Use of gloves during each patient contact with blood or other potentially infectious materials, mucous membranes, and non-intact skin could occur and changed before and after each patient contact;
- (c) Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and
- (d) Health care worker education programs which may include:
 - 1. Types of patient care activities that can result in hand contamination;
 - 2. Advantages and disadvantages of various methods used to clean hands;
 - 3. Potential risks of health care workers colonization or infection caused by organisms acquired from patients; and
 - 4. Morbidity, mortality, and costs associated with health care associated infections.

(11) The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.

Rule 1200-8-26-.04, Administration, is amended by deleting subparagraph (20)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (20)(c), so that as amended, the new subparagraphs (20)(b) and (20)(c) shall read:

- (20) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (20) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-27-.04, Administration, is amended by deleting subparagraph (22)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (22)(c), so that as amended, the new subparagraphs (22)(b) and (22)(c) shall read:

- (22) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

RULEMAKING HEARINGS

- (22) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-28-.04, Administration, is amended by deleting subparagraph (18)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (18)(c), so that as amended, the new subparagraphs (18)(b) and (18)(c) shall read:

- (18) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (18) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.

Rule 1200-8-29-.04, Administration, is amended by deleting subparagraph (6)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (6)(c), so that as amended, the new subparagraphs (6)(b) and (6)(c) shall read:

- (6) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (6) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

RULEMAKING HEARINGS

Rule 1200-8-32-.04, Administration, is amended by deleting subparagraph (17)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (17)(c), so that as amended, the new subparagraphs (17)(b) and (17)(c) shall read:

- (17) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (17) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.

Rule 1200-8-34-.04, Administration, is amended by adding the following language as new paragraph (18), so that as amended, the new paragraph (18) shall read:

- (18) All Health care facilities licensed pursuant to T.C.A. §68-11-201, et. seq. shall post on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height the following in the main public entrance:
 - (a) a statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

Rule 1200-8-35-.04, Administration, is amended by deleting subparagraph (18)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (18)(c), and is further amended by deleting paragraph (19), so that as amended, the new subparagraphs (18)(b) and (18)(c) shall read:

- (18) (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
- (18) (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

RULEMAKING HEARINGS

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11”) in width and seventeen inches (17”) in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, and 71-6-121.

The notice of rulemaking set out herein was properly filed in the Department of State on the 7th day of November, 2006. (11-03-06)

RULEMAKING HEARINGS

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Care Facilities Conference Room on the fifth floor of the Heritage Place Metrocenter located at 227 French Landing, Suite 501, Nashville, TN at 9:00 a.m. (CST) on the 17th day of January, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, Fifth Floor, Heritage Place Metrocenter, 227 French Landing, Suite 501, Nashville, TN 37243, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 227 French Landing, Suite 501, Heritage Place Metrocenter, Nashville, TN 37243, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

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

**CHAPTER 1200-8-17
ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL REHABILITATION TREATMENT FACILITIES**

**CHAPTER 1200-8-18
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL TREATMENT FACILITIES**

**CHAPTER 1200-8-19
ALCOHOL AND OTHER DRUGS OF ABUSE DUI SCHOOL FACILITIES**

**CHAPTER 1200-8-20
ALCOHOL AND OTHER DRUGS OF ABUSE PREVENTION PROGRAM FACILITIES**

**CHAPTER 1200-8-21
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL NARCOTIC TREATMENT FACILITIES**

**CHAPTER 1200-8-22
ALCOHOL AND OTHER DRUGS OF ABUSE HALFWAY HOUSE TREATMENT FACILITIES**

RULEMAKING HEARINGS

CHAPTER 1200-8-23 ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL DETOXIFICATION TREATMENT FACILITIES

AMENDMENTS

Rule 1200-8-2-.07, Building Standards, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) The prescribed child care center must be constructed, arranged, and maintained to ensure the safety of the children.
- (2) The condition of the physical plant and the overall prescribed child care center environment must be developed and maintained in such a manner that the safety and well-being of the children are assured.
- (3) When construction is planned by a facility for any building, additions to an existing building or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. For the purpose of life safety, prescribed child care centers are required to meet business occupancies and all new centers shall conform to the current addition of the Standard Building Code, the National Fire Protection Code (NFPA), and the National Electrical Code, as adopted by the Board for Licensing Health Care Facilities. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.).
- (4) Flammable and combustible liquids such as gasoline, cleaning fluids, kerosene, turpentine etc., shall be stored in safety containers and stored at least 16 feet from the building or stored in a U.L. approved/listed cabinet and ventilated as prescribed by code requirement or manufacturers' recommendation.
- (5) Mechanical
 - (a) All units having a total of 2,000 cubic feet per minute (CFM) or greater in a zone shall shut down when the fire alarm panel is activated.
- (6) Electrical
 - (a) The electrical system, components, equipment and appliances shall be kept in good repair at all times.
 - (b) Knob and Tube wiring is prohibited.
 - (c) Electrical cords shall not have splices.
 - (d) Electric circuit breaker panel boxes shall not have open slots exposing wiring.
 - (e) Circuit breakers shall be properly labeled.
 - (f) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshall.

RULEMAKING HEARINGS

- (g) The electrical system shall not be overloaded.
 - (h) Ground-Fault Circuit Interrupters (GFCI) are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc. and within six (6) feet of any laboratory.
- (7) Fire Alarm
- (a) Manual pull stations shall be installed in paths of travel to exits and by each required exit.
 - (b) All alarm devices shall be connected to the fire alarm panel.
 - (c) The fire alarm panel shall have auxiliary power such as batteries or generators.
 - (d) All sprinkler systems are to be electrically supervised.
 - (e) Structures with atriums, vertical openings or monumental stairs open to another floor must have their fire alarm system automatically transmit an alarm to the municipal fire department or to an agency acceptable to this department with equipment which meets NFPA signaling and standard building codes. Fire protection systems and smoke evacuation systems must be on emergency power.

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

Rule 1200-8-2-.08, Life Safety, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Any prescribed child care center which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The prescribed child care center shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Records which document and evaluate these incidents must be maintained for at least three (3) years.
- (3) The prescribed child care center shall have a written emergency plan to document instructions to staff, upon employment, and clients, upon enrollment, in fire evacuation procedures. The plan shall include actions to be taken in inclement weather and internal and external emergencies. Evacuation plans shall be posted in prominent areas such as reception areas, near door in class rooms, etc. and shall designate meeting places outside the building in event of emergencies.
- (4) Corridor doors shall not have louvers.

RULEMAKING HEARINGS

- (5) Battery powered emergency lighting shall be installed in corridors, common areas and in stair ways.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (8) Corridors in multi-storied buildings shall have two exits remote from each other. At least one exit shall be directly to the outside.
- (9) Storage beneath any stair is prohibited.
- (10) Combustible finishes and furnishings shall not be used.
- (11) Open flame and portable space heaters shall not be permitted in the facility. Cooking appliances other than microwave ovens shall not be allowed in the facility.
- (12) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F.
- (13) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (14) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (15) Electrical cords shall not be run under rugs or carpets.
- (16) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted to comply with NFPA 10. An extinguisher in the kitchen area shall be a minimum of 2-A:10 B:C and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) Smoking and smoking materials shall be permitted only in designated areas. Ashtrays must be provided wherever smoking is permitted. The facility shall have written policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for staff and visitors who smoke. The designated smoking room or rooms shall not be the dining room or activity room.
- (19) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.
- (20) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (21) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or child accessible areas.

RULEMAKING HEARINGS

- (22) Emergency telephone numbers must be posted near a telephone accessible to the children.

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

Rule 1200-8-17-.07, Building Standards, is amended by deleting paragraphs (25) and (27) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (25) and (27) shall read:

- (25) A minimum of eighty (80) square feet of bedroom space must be provided each resident, except those existing facilities licensed prior to this requirement. No bedroom shall have more than four (4) beds. Privacy screens or curtains shall be provided and used when requested by the resident.
- (27) Each toilet, lavatory, bath or shower shall serve no more than eight (8) persons. Grab bars and non-slip surfaces shall be installed at tubs and showers.

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

Rule 1200-8-17-.08, Life Safety, is amended by deleting paragraphs (18) and (22) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (18) and (22) shall read:

- (18) The facility shall have written policies and procedures addressing smoking. The facility must have designated smoking areas that shall be provided with ashtrays. If smoking is only permitted outside the facility, then the facility must make accommodation to address inclement weather. Residents who smoke shall be evaluated as to whether they require supervision to prevent the starting of fires or hurting themselves. The evaluation shall be documented. Appropriate supervision shall be provided as required. Smoking in bed is prohibited.
- (22) Janitorial supplies shall be kept locked and not accessible by residents. If residents are permitted or required to use janitorial supplies, the facility shall have written policies and procedures addressing their use.

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

Rule 1200-8-18-.07, Building Standards, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) The non-residential treatment facility must be constructed, arranged, and maintained to ensure the safety of the clients.
- (2) The condition of the physical plant and the overall non-residential treatment facility environment must be developed and maintained in such a manner that the safety and well-being of clients are assured.
- (3) When construction is planned by any facility for any building, additions to an existing building or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. For the purpose of life safety, non-residential

RULEMAKING HEARINGS

treatment facilities are required to meet business occupancies and all new facilities shall conform to the current addition of the Standard Building Code, the National Fire Protection Code (NFPA), and the National Electrical Code, as adopted by the Board for Licensing Health Care Facilities. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.).

- (4) Flammable and combustible liquids such as gasoline, cleaning fluids, kerosene, turpentine etc., shall be stored in safety containers and stored at least 16 feet from the building or stored in a U.L. approved/listed cabinet and ventilated as prescribed by code requirement or manufacturers' recommendation.
- (5) Mechanical
 - (a) All units having a total of 2,000 cubic feet per minute (CFM) or greater in a zone shall shut down when the fire alarm panel is activated.
- (6) Electrical
 - (a) The electrical system, components, equipment and appliances shall be kept in good repair at all times.
 - (b) Knob and Tube wiring is prohibited.
 - (c) Electrical cords shall not have splices.
 - (d) Electric circuit breaker panel boxes shall not have open slots exposing wiring.
 - (e) Circuit breakers shall be properly labeled.
 - (f) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshall.
 - (g) The electrical system shall not be overloaded.
 - (h) Ground-Fault Circuit Interrupters (GFCI) are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc. and within six (6) feet of any laboratory.
- (7) Fire Alarm
 - (a) Manual pull stations shall be installed in paths of travel to exits and by each required exit.
 - (b) All alarm devices shall be connected to the fire alarm panel.
 - (c) The fire alarm panel shall have auxiliary power such as batteries or generators.
 - (d) All sprinkler systems are to be electrically supervised.
 - (e) Structures with atriums, vertical openings or monumental stairs open to another floor must have their fire alarm system automatically transmit an alarm to the municipal

RULEMAKING HEARINGS

fire department or to an agency acceptable to this department with equipment which meets NFPA signaling and standard building codes. Fire protection systems and smoke evacuation systems must be on emergency power.

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

Rule 1200-8-18-.08, Life Safety, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Any non-residential treatment facility which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The non-residential treatment facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Records which document and evaluate these incidents must be maintained for at least three (3) years.
- (3) The non-residential treatment facility shall have a written emergency plan to document instructions to staff, upon employment, and clients, upon enrollment, in fire evacuation procedures. The plan shall include actions to be taken in inclement weather and internal and external emergencies. Evacuation plans shall be posted in prominent areas such as reception areas, near door in class rooms, etc. and shall designate meeting places outside the building in event of emergencies.
- (4) Corridor doors shall not have louvers.
- (5) Battery powered emergency lighting shall be installed in corridors, common areas and in stair ways.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (8) Corridors in multi-storied buildings shall have two exits remote from each other. At least one exit shall be directly to the outside.
- (9) Storage beneath any stair is prohibited.
- (10) Combustible finishes and furnishings shall not be used.
- (11) The facility shall have written policies and procedures addressing smoking. The facility must have designated smoking areas that shall be provided with ashtrays. If smoking is only permitted outside the facility, then the facility must make accommodation to address inclement weather.

RULEMAKING HEARINGS

- (12) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F.
- (13) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (14) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (15) Electrical cords shall not be run under rugs or carpets.
- (16) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted to comply with NFPA 10. An extinguisher in the kitchen area shall be a minimum of 2-A:10 B:C and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) The facility shall have written policies and procedures addressing smoking. The facility must have designated smoking areas that shall be provided with ashtrays. If smoking is only permitted outside the facility, then the facility must make accommodation to address inclement weather.
- (19) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.
- (20) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (21) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or client accessible areas.
- (22) Emergency telephone numbers must be posted near a telephone accessible to the clients.

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

Rule 1200-8-19-.07, Building Standards, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) The DUI facility must be constructed, arranged, and maintained to ensure the safety of the clients.
- (2) The condition of the physical plant and the overall DUI facility environment must be developed and maintained in such a manner that the safety and well-being of clients are assured.
- (3) When construction is planned by any facility for any building, additions to an existing building

RULEMAKING HEARINGS

or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. For the purpose of life safety, DUI facilities are required to meet business occupancies and all new facilities shall conform to the current addition of the Standard Building Code, the National Fire Protection Code (NFPA), and the National Electrical Code, as adopted by the Board for Licensing Health Care Facilities. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.).

- (4) Flammable and combustible liquids such as gasoline, cleaning fluids, kerosene, turpentine etc., shall be stored in safety containers and stored at least 16 feet from the building or stored in a U.L. approved/listed cabinet and ventilated as prescribed by code requirement or manufacturers' recommendation.
- (5) Mechanical
 - (a) All units having a total of 2,000 cubic feet per minute (CFM) or greater in a zone shall shut down when the fire alarm panel is activated.
- (6) Electrical
 - (a) The electrical system, components, equipment and appliances shall be kept in good repair at all times.
 - (b) Knob and Tube wiring is prohibited.
 - (c) Electrical cords shall not have splices.
 - (d) Electric circuit breaker panel boxes shall not have open slots exposing wiring.
 - (e) Circuit breakers shall be properly labeled.
 - (f) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshall.
 - (g) The electrical system shall not be overloaded.
 - (h) Ground-Fault Circuit Interrupters (GFCI) are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc. and within six (6) feet of any laboratory.
- (7) Fire Alarm
 - (a) Manual pull stations shall be installed in paths of travel to exits and by each required exit.
 - (b) All alarm devices shall be connected to the fire alarm panel.
 - (c) The fire alarm panel shall have auxiliary power such as batteries or generators.
 - (d) All sprinkler systems are to be electrically supervised.

RULEMAKING HEARINGS

- (e) Structures with atriums, vertical openings or monumental stairs open to another floor must have their fire alarm system automatically transmit an alarm to the municipal fire department or to an agency acceptable to this department with equipment which meets NFPA signaling and standard building codes. Fire protection systems and smoke evacuation systems must be on emergency power.

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

Rule 1200-8-19-.08, Life Safety, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Any DUI facility which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The DUI facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Records which document and evaluate these incidents must be maintained for at least three (3) years.
- (3) The DUI facility shall have a written emergency plan to document instructions to staff, upon employment, and clients, upon enrollment, in fire evacuation procedures. The plan shall include actions to be taken in inclement weather and internal and external emergencies. Evacuation plans shall be posted in prominent areas such as reception areas, near door in class rooms, etc. and shall designate meeting places outside the building in event of emergencies.
- (4) Corridor doors shall not have louvers.
- (5) Battery powered emergency lighting shall be installed in corridors, common areas and in stair ways.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (8) Corridors in multi-storied buildings shall have two exits remote from each other. At least one exit shall be directly to the outside.
- (9) Storage beneath any stair is prohibited.
- (10) Combustible finishes and furnishings shall not be used.
- (11) Open flame and portable space heaters shall not be permitted in the facility. Cooking appliances other than microwave ovens shall not be allowed in the facility.

RULEMAKING HEARINGS

- (12) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F.
- (13) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (14) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (15) Electrical cords shall not be run under rugs or carpets.
- (16) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted to comply with NFPA 10. An extinguisher in the kitchen area shall be a minimum of 2-A:10 B:C and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) Smoking and smoking materials shall be permitted only in designated areas under supervision. Ashtrays must be provided wherever smoking is permitted. The facility shall have written policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for clients who smoke. The designated smoking room or rooms shall not be the dining room or activity room.
- (19) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.
- (20) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (21) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or client accessible areas.
- (22) Emergency telephone numbers must be posted near a telephone accessible to the clients.

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

Rule 1200-8-20-.07, Building Standards, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) The alcohol and drug prevention program facility must be constructed, arranged, and maintained to ensure the safety of the participants.
- (2) The condition of the physical plant and the overall alcohol and drug prevention program facility environment must be developed and maintained in such a manner that the safety and well-being of participants are assured.

RULEMAKING HEARINGS

- (3) When construction is planned by any facility for any building, additions to an existing building or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. For the purpose of life safety, alcohol and drug prevention program facilities are required to meet business occupancies and all new facilities shall conform to the current addition of the Standard Building Code, the National Fire Protection Code (NFPA), and the National Electrical Code, as adopted by the Board for Licensing Health Care Facilities. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.).
- (4) Flammable and combustible liquids such as gasoline, cleaning fluids, kerosene, turpentine etc., shall be stored in safety containers and stored at least 16 feet from the building or stored in a U.L. approved/listed cabinet and ventilated as prescribed by code requirement or manufacturers' recommendation.
- (5) Mechanical
 - (a) All units having a total of 2,000 cubic feet per minute (CFM) or greater in a zone shall shut down when the fire alarm panel is activated.
- (6) Electrical
 - (a) The electrical system, components, equipment and appliances shall be kept in good repair at all times.
 - (b) Knob and Tube wiring is prohibited.
 - (c) Electrical cords shall not have splices.
 - (d) Electric circuit breaker panel boxes shall not have open slots exposing wiring.
 - (e) Circuit breakers shall be properly labeled.
 - (f) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshall.
 - (g) The electrical system shall not be overloaded.
 - (h) Ground-Fault Circuit Interrupters (GFCI) are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc. and within six (6) feet of any laboratory.
- (7) Fire Alarm
 - (a) Manual pull stations shall be installed in paths of travel to exits and by each required exit.
 - (b) All alarm devices shall be connected to the fire alarm panel.
 - (c) The fire alarm panel shall have auxiliary power such as batteries or generators.
 - (d) All sprinkler systems are to be electrically supervised.

RULEMAKING HEARINGS

- (e) Structures with atriums, vertical openings or monumental stairs open to another floor must have their fire alarm system automatically transmit an alarm to the municipal fire department or to an agency acceptable to this department with equipment which meets NFPA signaling and standard building codes. Fire protection systems and smoke evacuation systems must be on emergency power.

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

Rule 1200-8-20-.08, Life Safety, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Any alcohol and drug prevention program facility which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Records which document and evaluate these incidents must be maintained for at least three (3) years.
- (3) The facility shall have a written emergency plan to document instructions to staff, upon employment, and participants, upon enrollment, in fire evacuation procedures. The plan shall include actions to be taken in inclement weather and internal and external emergencies. Evacuation plans shall be posted in prominent areas such as reception areas, near door in class rooms, etc. and shall designate meeting places outside the building in event of emergencies.
- (4) Corridor doors shall not have louvers.
- (5) Battery powered emergency lighting shall be installed in corridors, common areas and in stair ways.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (8) Corridors in multi-storied buildings shall have two exits remote from each other. At least one exit shall be directly to the outside.
- (9) Storage beneath any stair is prohibited.
- (10) Combustible finishes and furnishings shall not be used.
- (11) Open flame and portable space heaters shall not be permitted in the facility. Cooking appli-

RULEMAKING HEARINGS

ances other than microwave ovens shall not be allowed in the facility.

- (12) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F.
- (13) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (14) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (15) Electrical cords shall not be run under rugs or carpets.
- (16) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted to comply with NFPA 10. An extinguisher in the kitchen area shall be a minimum of 2-A:10 B:C and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) Smoking and smoking materials shall be permitted only in designated areas under supervision. Ashtrays must be provided wherever smoking is permitted. The facility shall have written policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for participants who smoke. The designated smoking room or rooms shall not be the dining room or activity room.
- (19) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.
- (20) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (21) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or participant accessible areas.
- (22) Emergency telephone numbers must be posted near a telephone accessible to the participants.

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

Rule 1200-8-21-.08, Building Standards, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) The non-residential narcotic treatment facility must be constructed, arranged, and maintained to ensure the safety of the clients.
- (2) The condition of the physical plant and the overall non-residential narcotic treatment facility environment must be developed and maintained in such a manner that the safety and well-being of clients are assured.

RULEMAKING HEARINGS

- (3) When construction is planned by any facility for any building, additions to an existing building or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. For the purpose of life safety, non-residential narcotic treatment facilities are required to meet business occupancies and all new facilities shall conform to the current addition of the Standard Building Code, the National Fire Protection Code (NFPA), and the National Electrical Code, as adopted by the Board for Licensing Health Care Facilities. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.).
- (4) Flammable and combustible liquids such as gasoline, cleaning fluids, kerosene, turpentine etc., shall be stored in safety containers and stored at least 16 feet from the building or stored in a U.L. approved/listed cabinet and ventilated as prescribed by code requirement or manufacturers' recommendation.
- (5) Mechanical
 - (a) All units having a total of 2,000 cubic feet per minute (CFM) or greater in a zone shall shut down when the fire alarm panel is activated.
- (6) Electrical
 - (a) The electrical system, components, equipment and appliances shall be kept in good repair at all times.
 - (b) Knob and Tube wiring is prohibited.
 - (c) Electrical cords shall not have splices.
 - (d) Electric circuit breaker panel boxes shall not have open slots exposing wiring.
 - (e) Circuit breakers shall be properly labeled.
 - (f) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshall.
 - (g) The electrical system shall not be overloaded.
 - (h) Ground-Fault Circuit Interrupters (GFCI) are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc. and within six (6) feet of any laboratory.
- (7) Fire Alarm
 - (a) Manual pull stations shall be installed in paths of travel to exits and by each required exit.
 - (b) All alarm devices shall be connected to the fire alarm panel.
 - (c) The fire alarm panel shall have auxiliary power such as batteries or generators.
 - (d) All sprinkler systems are to be electrically supervised.

RULEMAKING HEARINGS

- (e) Structures with atriums, vertical openings or monumental stairs open to another floor must have their fire alarm system automatically transmit an alarm to the municipal fire department or to an agency acceptable to this department with equipment which meets NFPA signaling and standard building codes. Fire protection systems and smoke evacuation systems must be on emergency power.

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

Rule 1200-8-21-.09, Life Safety, is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Any non-residential narcotic treatment facility which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The non-residential narcotic treatment facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Records which document and evaluate these incidents must be maintained for at least three (3) years.
- (3) The non-residential narcotic treatment facility shall have a written emergency plan to document instructions to staff, upon employment, and clients, upon enrollment, in fire evacuation procedures. The plan shall include actions to be taken in inclement weather and internal and external emergencies. Evacuation plans shall be posted in prominent areas such as reception areas, near door in class rooms, etc. and shall designate meeting places outside the building in event of emergencies.
- (4) Corridor doors shall not have louvers.
- (5) Battery powered emergency lighting shall be installed in corridors, common areas and in stair ways.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (8) Corridors in multi-storied buildings shall have two exits remote from each other. At least one exit shall be directly to the outside.
- (9) Storage beneath any stair is prohibited.
- (10) Combustible finishes and furnishings shall not be used.

RULEMAKING HEARINGS

- (11) Open flame and portable space heaters shall not be permitted in the facility. Cooking appliances other than microwave ovens shall not be allowed in the facility.
- (12) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F.
- (13) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (14) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (15) Electrical cords shall not be run under rugs or carpets.
- (16) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted to comply with NFPA 10. An extinguisher in the kitchen area shall be a minimum of 2-A:10 B:C and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) Smoking and smoking materials shall be permitted only in designated areas under supervision. Ashtrays must be provided wherever smoking is permitted. The facility shall have written policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for clients who smoke. The designated smoking room or rooms shall not be the dining room or activity room.
- (19) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.
- (20) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (21) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or client accessible areas.
- (22) Emergency telephone numbers must be posted near a telephone accessible to the clients.

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

Rule 1200-8-22-.07, Building Standards, is amended by deleting paragraphs (25) and (27) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (25) and (27) shall read:

- (25) A minimum of eighty (80) square feet of bedroom space must be provided each resident, except those existing facilities licensed prior to this requirement. No bedroom shall have more than four (4) beds. Privacy screens or curtains shall be provided and used when requested by the resident.

RULEMAKING HEARINGS

- (27) Each toilet, lavatory, bath or shower shall serve no more than eight (8) persons. Grab bars and non-slip surfaces shall be installed at tubs and showers.

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

Rule 1200-8-22-.08, Life Safety, is amended by deleting paragraphs (18) and (22) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (18) and (22) shall read:

- (18) The facility shall have written policies and procedures addressing smoking. The facility must have designated smoking areas that shall be provided with ashtrays. If smoking is only permitted outside the facility, the facility must make accommodations to address inclement weather. Residents who smoke shall be evaluated as to whether they require supervision to prevent the starting of fires or hurting themselves. The evaluation shall be documented. Appropriate supervision shall be provided as required. Smoking in bed is prohibited.
- (22) Janitorial supplies shall be kept locked and inaccessible to residents. If residents are permitted or required to use janitorial supplies, the facility shall have written policies and procedures addressing their use.

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

Rule 1200-8-23-.07, Building Standards, is amended by deleting paragraphs (25) and (27) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (25) and (27) shall read:

- (25) A minimum of eighty (80) square feet of bedroom space must be provided each resident, except those existing facilities licensed prior to this requirement. No bedroom shall have more than four (4) beds. Privacy screens or curtains shall be provided and used when requested by the resident.
- (27) Each toilet, lavatory, bath or shower shall serve no more than eight (8) persons. Grab bars and non-slip surfaces shall be installed at tubs and showers.

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

Rule 1200-8-23-.08, Life Safety, is amended by deleting paragraphs (18) and (22) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (18) and (22) shall read:

- (18) The facility shall have written policies and procedures addressing smoking. The facility must have designated smoking areas that shall be provided with ashtrays. If smoking is only permitted outside the facility, the facility must make accommodations to address inclement weather. Residents who smoke shall be evaluated as to whether they require supervision to prevent the starting of fires or hurting themselves. The evaluation shall be documented. Appropriate supervision shall be provided as required. Smoking in bed is prohibited.

RULEMAKING HEARINGS

(22) Janitorial supplies shall be kept locked and inaccessible to residents. If residents are permitted or required to use janitorial supplies, the facility shall have written policies and procedures addressing their use.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 7th day of November, 2006. (11-01-06)

RULEMAKING HEARINGS

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

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Care Facilities Conference Room on the fifth floor of the Heritage Place Metrocenter located at 227 French Landing, Suite 501, Nashville, TN at 10:00 a.m. (CST) on the 17th day of January, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, Fifth Floor, Heritage Place Metrocenter, 227 French Landing, Suite 501, Nashville, TN 37243, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 227 French Landing, Suite 501, Heritage Place Metrocenter, Nashville, TN 37243, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

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

CHAPTER 1200-8-32 STANDARDS FOR END STAGE RENAL DIALYSIS CLINICS

CHAPTER 1200-8-34 STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING PROFESSIONAL SUPPORT SERVICES

CHAPTER 1200-8-35 STANDARDS FOR OUTPATIENT DIAGNOSTIC CENTERS

AMENDMENTS

Rule 1200-8-10-.02, Licensing Procedures, is amended by deleting subparagraph (4)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (4)(c) through (4)(f), so that as amended, the new subparagraphs (4)(b) through (4)(f) shall read:

- (4) (b) A change of ownership occurs whenever there is a change in the legal structure by which the facility is owned and operated and any ownership interest of the preceding or succeeding entity changes.

RULEMAKING HEARINGS

- (4) (c) Transactions constituting a change of ownership include, but are not limited to, the following:
1. Transfer of the facility's legal title;
 2. Lease of the facility's operation;
 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;
 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 5. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 6. The consolidation of a corporate facility owner with one or more corporations; or,
 7. Transfers between levels of government.
- (4) (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
1. Changes in the membership of a corporate board of directors or board of trustees;
 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 3. Changes in the membership of a non-profit corporation;
 4. Transfers between departments of the same level of government; or,
 5. Corporate stock transfers or sales, even when a controlling interest.
- (4) (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (4) (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the same legal form as the former owner.

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

Rule 1200-8-32-.02, Licensing Procedures, is amended by deleting subparagraph (3)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (3)(c) through (3)(f), so that as amended, the new subparagraphs (3)(b) through (3)(f) shall read:

RULEMAKING HEARINGS

- (3) (b) A change of ownership occurs whenever there is a change in the legal structure by which the facility is owned and operated and any ownership interest of the preceding or succeeding entity changes.
- (3) (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operation;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 - 5. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 - 6. The consolidation of a corporate facility owner with one or more corporations; or,
 - 7. Transfers between levels of government.
- (3) (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
 - 1. Changes in the membership of a corporate board of directors or board of trustees;
 - 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 - 3. Changes in the membership of a non-profit corporation;
 - 4. Transfers between departments of the same level of government; or,
 - 5. Corporate stock transfers or sales, even when a controlling interest.
- (3) (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (3) (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the same legal form as the former owner.

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

RULEMAKING HEARINGS

Rule 1200-8-34-.02, Licensing Procedures, is amended by deleting subparagraph (3)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (3)(c) through (3)(f), so that as amended, the new subparagraphs (3)(b) through (3)(f) shall read:

- (3) (b) A change of ownership occurs whenever there is a change in the legal structure by which the facility is owned and operated and any ownership interest of the preceding or succeeding entity changes.
- (3) (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operation;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 - 5. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 - 6. The consolidation of a corporate facility owner with one or more corporations; or,
 - 7. Transfers between levels of government.
- (3) (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
 - 1. Changes in the membership of a corporate board of directors or board of trustees;
 - 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 - 3. Changes in the membership of a non-profit corporation;
 - 4. Transfers between departments of the same level of government; or,
 - 5. Corporate stock transfers or sales, even when a controlling interest.
- (3) (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.
- (3) (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the same legal form as the former owner.

RULEMAKING HEARINGS

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

Rule 1200-8-35-.02, Licensing Procedures, is amended by deleting subparagraph (4)(b) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraphs (4)(c) through (4)(f), so that as amended, the new subparagraphs (4)(b) through (4)(f) shall read:

- (4) (b) A change of ownership occurs whenever there is a change in the legal structure by which the facility is owned and operated and any ownership interest of the preceding or succeeding entity changes.
- (4) (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operation;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 - 5. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 - 6. The consolidation of a corporate facility owner with one or more corporations; or,
 - 7. Transfers between levels of government.
- (4) (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
 - 1. Changes in the membership of a corporate board of directors or board of trustees;
 - 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 - 3. Changes in the membership of a non-profit corporation;
 - 4. Transfers between departments of the same level of government; or,
 - 5. Corporate stock transfers or sales, even when a controlling interest.
- (4) (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

RULEMAKING HEARINGS

- (4) (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the same legal form as the former owner.

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

The notice of rulemaking set out herein was properly filed in the Department of State on the 7th day of November, 2006. (11-02-06)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240 ADULT AND FAMILY SERVICES DIVISION

There will be hearings 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 hearings 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 following locations:

- (1) Knoxville, Tennessee: January 16, 2007, 6:30 p.m., Knoxville State Office Building, 7th Floor, 531 Henley Street, Conference Room, A, Knoxville, TN 37902;
- (2) Columbia, Tennessee: January 16, 2007; 6:30 p.m. Suite B, Lobby, Maury County Department of Human Services Office, 1400 College Park Drive, Columbia, TN 38401;
- (3) Nashville, Tennessee: January 18, 2007, 6:30 p.m., 2nd Floor Board Room, Citizens Plaza State Office Building, 400 Deaderick Street,, Nashville, TN 37248;
- (4) Johnson City, Tennessee: January 18, 2007 at 6:30 p.m., Tennessee Department of Human Services, 905 Buffalo Street, 2nd Floor Conference Room, Johnson City, TN 37604;
- (5) Chattanooga, Tennessee: January 23, 2007, 6:30 p.m., 1st Floor-Auditorium, Chattanooga State Office Building, 540 McCallie Avenue, Chattanooga, TN 37402;
- (6) Jackson, Tennessee: January 23, 2007 6:30 p.m., 2nd Floor Conference Room B, Suite 210 Lowell Thomas State Office Building, 225 Martin Luther King Jr. Drive, Jackson, TN 38301;
- (7) Cookeville, Tennessee: January 25, 2007, 6:30 p.m. Putnam County Department of Human Services Office, 269 East South Willow, Cookeville, TN 38501;
- (8) Memphis, Tennessee: January 25, 2007, 6:30 p.m., Second Floor Auditorium, Donnelly J. Hill State Office Building, 170 North Main Street, Memphis, TN 38103.

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, Anneita Dunbar, 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: Kim Beals, Director of Legal Services, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248, telephone number (615) 313-4731.

RULEMAKING HEARINGS

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

**CHAPTER 1240-4-7
REPORT CARDS AND RATED LICENSING FOR CHILD CARE AGENCIES**

AMENDMENTS

Rule 1240-4-7-.05 Re-Evaluations and Reviews of Report Cards and Agency Ratings, is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-4-7-.05 REVIEWS, APPEALS, AND REASSESSMENTS.

- (1) Program Reassessment.
 - (a) Upon receiving the results of its report card evaluation, if the agency does not dispute the results of the evaluation, but would like to be reassessed based upon new or changed conditions occurring since the date of the agency's last completed assessment, the child care agency may request in writing a Program Reassessment.
 - (b) The child care agency is responsible for any and all costs, as determined by the Department, associated with the Environment Rating Scales assessment. Any such costs must be paid prior to the agency receiving a Program Reassessment.
 - (c) The Program Reassessment shall be conducted according to the policies and procedures established by the Department and may utilize all of the rated license component areas, including the Environment Rating Scales.
 - (d) Bonus Payments.
 1. During the period of the reassessment, the availability / amount of any bonus payments made by the Department pursuant to 1240-4-7.04(10) shall be determined by the results of the most recently completed assessment.
 2. Following completion of the reassessment, the availability / amount of any bonus payments made by the Department shall be determined by the results of the reassessment.
 - (e) The results of any Program Reassessment conducted pursuant to the provisions of this paragraph:
 1. Shall become effective immediately upon the Department's completion of the Program Reassessment and shall replace, in their entireties, any prior results for program areas which were reassessed; and
 2. Shall not be subject to either Intradepartmental Review or Administrative Hearing, as set forth below.

RULEMAKING HEARINGS

(2) Intradepartmental Review.

- (a) Upon receiving the results of its report card evaluation, a child care agency may request an Intradepartmental Review of the result of the evaluation, to be conducted according to the policies and procedures established by the Department.
- (b) The Intradepartmental Review shall provide an informal opportunity for the child care agency to dispute any of the following:
 - 1. The overall agency rating;
 - 2. The Program Assessment rating or scores; and/or
 - 3. The rating of any other component area.
- (c) The request for an Intradepartmental Review shall be in writing and shall include:
 - 1. A statement that identifies the specific information and/or rating that is in dispute; and
 - 2. A statement that identifies the basis upon which the agency is alleging that an error has occurred.
 - 3. The child care agency may also submit supporting documentation with its written request.
 - 4. If the information required in parts (2)(c)1 and 2 is not provided by the child care agency, the appeal may be dismissed at the sole discretion of the Department.
- (d) Issues considered during the Intradepartmental Review shall be limited to:
 - 1. Whether, at the time of the licensing evaluation, the agency was provided proper credit for compliance with the criteria required in each of the report card component areas; and/or
 - 2. Whether the agency's rating was otherwise correctly calculated.
 - 3. Changes made within, or by, the agency after the date of the last complete licensing evaluation or the validity of the evaluation instrument used to conduct the agency's program assessment shall not be considered in the appeal process.
- (e) The written request for Intradepartmental Review must be received by the Department within twenty (20) business days following the date of mailing of the notice of the report card evaluation to the child care agency.
- (f) Intradepartmental Review shall precede, and must be completed before, any Administrative Hearing and shall not be subject to the contested case provisions of the Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
- (g) In conducting the review, the Department may take any of the following actions as deemed appropriate in its discretion:

RULEMAKING HEARINGS

1. Request additional information from the child care agency and/or third parties;
 2. Examine additional documentation from the child care agency and/or third parties; and/or
 3. Conduct an informal hearing, not subject to the provisions of T.C.A. §§ 4-5-301 et seq., that may include testimony from the child care agency and/or third parties.
- (h) The Department shall complete the review and render a written decision to the child care agency within forty-five (45) business days of receipt by the Department of the written request for review.
- (i) Bonus Payments.
1. During the Intradepartmental Review process, the agency can elect to receive its bonus payments based upon the results of the previous report card evaluation or based upon the currently disputed report card evaluation.
 2. If the agency chooses to receive bonus payments based upon the results of the previous report card evaluation and the Intradepartmental Review does not result in an increase to the agency's score / rating, the agency will be required to refund to the Department the amount of the overpayment, which may be accomplished through recoupment by the Department of future amounts owed to the child care agency.
 3. If the agency chooses to receive bonus payments based upon the results of the currently disputed report card evaluation and the Intradepartmental Review results in an increase to the agency's score / rating which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference between the two amounts that accrued during the Intradepartmental Review process.
- (j) If the agency is not satisfied with the results of the Intradepartmental Review, the agency may request either an Administrative Hearing, as provided for in paragraph (3) below, or a Program Reassessment, as provided for in paragraph (4) below. If the child care agency chooses Program Reassessment, review of the originally disputed report card evaluation by Administrative Hearing shall no longer be available.
- (3) Administrative Hearing.
- (a) A request for Administrative Hearing must be submitted to the Department by the agency within ten (10) business days after the mailing date of the Department's written decision from the Intradepartmental Review.
 - (b) The issues addressed in the Administrative Hearing are limited to the issues raised during the Intradepartmental Review.
 - (c) The Administrative Hearing shall be conducted as a contested case proceeding by the Department's Appeals and Hearings Division according to T.C.A. §§ 4-5-301 et seq.
 - (d) The hearing officer shall render a written decision within thirty (30) business days after the hearing and shall send a copy of such decision to the Department and to the child care agency.

RULEMAKING HEARINGS

- (e) Bonus Payments.
 - 1. If the agency requests an Administrative Hearing, the agency's bonus payments shall be based upon the results of the currently disputed report card evaluation.
 - 2. If the Administrative Hearing results in an increase to the agency's report card evaluation rating / score which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference between the two amounts that accrued during the Administrative Hearing process.
- (4) Program Reassessment Subsequent to Intradepartmental Review.
 - (a) A Program Reassessment requested by the child care agency pursuant to subparagraph (2)(j) shall be conducted pursuant to the same requirements as specified in paragraph (1) above.
 - (b) Bonus Payments.
 - 1. If the agency requests a Program Reassessment, the agency's bonus payments shall be based upon the results of the currently disputed report card evaluation.
 - 2. If the Program Reassessment results in an increase to the agency's report card evaluation rating / score which warrants an increase in the amount of the bonus payment, the new amount will be paid by the Department as of the effective date of the reassessment.
 - (c) The results of the Program Reassessment shall not be subject to either Intradepartmental Review or Administrative Hearing.
- (5) Issuance of a New Report Card and/or Rated License.
 - (a) If the results of any process indicated in paragraphs (1) through (4) above should require the issuance of a new report card, such report card shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.
 - (b) If the results of any process indicated in paragraphs (1) through (4) above should require a change to the overall rating of the child care agency, a new license with the modified rating shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.
 - (c) Immediately upon receipt of the new report card and/or rated license, the child care agency shall post the report card and/or rated license as directed by the Department.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-3-502(a)(2), 71-3-502(j), and Acts 2001, ch. 453, § 6.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of November, 2006. (11-28-06)

RULEMAKING HEARINGS

BOARD FOR LICENSING CONTRACTORS - 0680

There will be a hearing before the Board for Licensing Contractors to consider the promulgation of rules pursuant to Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. § 62-6-138 [effective January 1, 2007]. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204, and will take place in the Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in the Davy Crockett Tower, in Nashville, Tennessee at 9:00 a.m. (Central Time) on the 24th day of January, 2007.

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 of Commerce and Insurance 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 Carolyn Lazenby, Executive Director of the Board for Licensing Contractors at 500 James Robertson Parkway, Davy Crockett Tower, 1st Floor, Nashville, Tennessee 37243, telephone (615) 741-8307.

SUBSTANCE OF PROPOSED RULES

NEW RULES

CHAPTER 0680-5 PRE-LICENSING COURSES

- 0680-5-.01 Definitions
- 0680-5-.02 Application
- 0680-5-.03 Fees
- 0680-5-.04 Course Approval Periods
- 0680-5-.05 Changes in Applications
- 0680-5-.06 Withdrawal of Approval
- 0680-5-.07 Promotional Materials
- 0680-5-.08 Relationship with Accountants and Insurance Brokers
- 0680-5-.09 Inspections
- 0680-5-.10 Citation Penalties

0680-5-.01 DEFINITIONS.

- (1) "Board" means the board for licensing contractors created by T.C.A. § 62-6-104.
- (2) "Pre-licensing course" means any course or workshop related to the practice of general or specialty contracting offered to assist an applicant for preparation of an examination required by the Board excluding courses offered by any public institution.
- (3) "Provider" means any person or entity who offers a pre-licensing course designed to assist an applicant for preparation of an examination required by the Board.

RULEMAKING HEARINGS

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-104, 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.02 APPLICATION.

- (1) Any provider who offers any pre-licensing course shall submit an application on the form prescribed by the Board. The application shall be verified and accompanied by:
 - (a) a non-refundable fee in the amount provided in rule 0680-5-.03;
 - (b) a resume for each instructor of such course outlining the instructor's education and experience;
 - (c) a detailed description of the content of such course(s);
 - (d) the projected schedule for the teaching of such course(s);
 - (e) a surety bond to the State of Tennessee Board for Licensing Contractors as obligee in a minimum amount of fifty thousand dollars (\$50,000); and
 - (f) such other information as the Board may reasonably request.
- (2) The applicant shall demonstrate to the satisfaction of the Board that each course submitted for approval will:
 - (a) cover subjects which are reasonably related to the practice of construction and suitable to benefit and enrich the students enrolled;
 - (b) be conducted in a facility that contains adequate space, seating, and equipment; and
 - (c) provide adequate means to make up for all classes missed by a student;

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.03 FEES.

The application and renewal application fee is fifteen hundred dollars (\$1500) per provider.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.04 COURSE APPROVAL PERIODS.

- (1) Each pre-licensing course approval shall remain effective for three (3) years from the date of approval. After three (3) years, the approval of the Board shall expire, unless the Board, after reviewing a renewal pre-licensing course application, approves the course for another such time period.
- (2) All pre-licensing course providers shall be required to resubmit their courses for approval at least

RULEMAKING HEARINGS

one hundred twenty (120) days prior to the applicable expiration date. Failure to meet this deadline may result in the non-approval of a course.

Authority: *Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].*

0680-5-.05 CHANGES IN APPLICATIONS.

Any material change in any information furnished in connection with any application of a pre-licensing course (including, but not limited to, an address change of a provider, information concerning course content, instructors, and facilities) shall be submitted to and approved by the Board before taking effect.

Authority: *Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].*

0680-5-.06 WITHDRAWAL OF APPROVAL.

Approval of any course(s) may be withdrawn by the Board if:

- (1) (a) the establishment or conduct of a course violates, or fails to meet the requirements of, the provisions of this chapter or other applicable law;
- (b) the information contained in the application is materially inaccurate or misleading;
- (c) the provider, an instructor, or any other school representative disseminates false or misleading information concerning any course;
- (d) the sponsor, an instructor, or any other school representative possesses, claims to possess, reveals, or distributes any questions utilized in examinations given by the Board;
- (e) the performance of the instructor is so deficient as to impair significantly the value of a course provided, however, that the instructor shall receive adequate notice of the discovered deficiency and opportunity to demonstrate satisfactory correction thereof; or
- (g) the provider, an instructor, or any other school representative disseminates false or misleading information regarding classifications, law, or entices an applicant to apply for unnecessary classes or purchase unnecessary course materials.

Authority: *Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].*

0680-5-.07 PROMOTIONAL MATERIALS.

- (1) All materials used for advertising or promoting any pre-licensing course shall contain statements or claims that are factually supported.

RULEMAKING HEARINGS

- (2) No provider shall advertise or promote that fees charged for the pre-licensing courses will be waived if the student fails to pass any examination required by the Board;
- (3) No provider shall advertise or promote any guarantee that a student will successfully pass any examination required by the Board; and
- (4) No provider shall advertise that it has been specially endorsed by the Board.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.08 RELATIONSHIP WITH ACCOUNTANTS AND INSURANCE BROKERS.

No provider offering a pre-licensing course shall advise students on financial accounting, insurance requirements or recommend, offer or encourage students to retain a particular accountant, accounting firm or insurance broker to complete any application requirements for a license under T.C.A. § 62-6-101 et. seq.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.09 INSPECTIONS.

By applying for the Board's approval of any pre-licensing course, the applicant agrees the Board or its authorized representative may perform periodic inspections and monitoring for the purposes of evaluating facilities, course content, instructor performance, or any other relevant aspect of the administration and conduct of such course.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.10 CITATION PENALTIES.

- (1) The Executive Director of the Board may issue citations against providers offering pre-licensing courses for any violation of T.C. A. § 62-6-138 or any rule contained herein. Each citation shall contain an order to cease all violations of this chapter, and an assessment of a civil penalty in accordance with the following schedule:

<u>Violation</u>	<u>Penalty</u>
T.C.A. § 62-6-138	\$250 - \$1,000

- (2) In determining the amount of any penalty to be assessed pursuant to this rule, the Executive Director may consider such factors as the following:
 - (a) whether the amount imposed will be substantial economic deterrent to the violator;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of noncompliance;

RULEMAKING HEARINGS

- (e) the interest of the public;
- (f) willfulness of the violation;
- (g) extent to which the licensee has sought to compensate any victim(s) of the violation.

Authority: *Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and T. C. A. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].*

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30th day of November, 2006. (11-29-06)

RULEMAKING HEARINGS

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES - 0940 OFFICE OF LICENSURE

There will be a hearing before the Tennessee Department of Mental Health and Developmental Disabilities, Office of Licensure to consider the promulgation of amended rules and repeal of rules pursuant to T.C.A. §§ 4-4-103, 4-5-202, and 204, and 33-1-302, 305, and 309, 33-2-301 and 302, and 33-2-404. 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 Commissioner's Large Conference Room on the 3rd Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 10:00 a.m., Central Standard Time on the 17th day of January, 2007.

Individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Tennessee Department of Mental Health and Developmental Disabilities, to discuss any auxiliary aids or services needed to facilitate such participation or review. 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 meeting date or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Mental Health and Developmental Disabilities ADA Coordinator, Joe Swinford, 3rd Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37243. Mr. Swinford's telephone number is (615) 532-6700; the Department's TDD is (615) 532-6612. Copies of the notice are available from the Tennessee Department of Mental Health and Developmental Disabilities in alternative format upon request.

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

Glenda Rogers, Office of Licensure, Department of Mental Health and Developmental Disabilities, 425 Fifth Avenue North, Fifth Floor, Cordell Hull Building, Nashville, TN 37243-1010, (615) 532-6590.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

CHAPTER 0940-5-2 LICENSURE ADMINISTRATION AND PROCEDURES

TABLE OF CONTENTS

0940-5-2-.01	Statement of Authority
0940-5-2-.02	Types and Conditions of Licenses
0940-5-2-.03	Unlawful Operation
0940-5-2-.04	Application Form
0940-5-2-.05	Fees
0940-5-2-.06	Application Process for Initial License
0940-5-2-.07	Application Process for License Renewal
0940-5-2-.08	Distinct Categories of Facilities and Services
0940-5-2-.09	Non-transferability of Licenses
0940-5-2-.10	Time Limits
0940-5-2-.11	Deemed Compliance
0940-5-2-.12	Access to Premises and Information
0940-5-2-.13	Grounds for Denial, Revocation, or Suspension
0940-5-2-.14	Expiration of Licenses
0940-5-2-.15	Posting of the License

RULEMAKING HEARINGS

- 0940-5-2-.16 Surrender Requirements
- 0940-5-2-.17 Exclusions From Licensure
- 0940-5-2-.18 Waiver Authority
- 0940-5-2-.19 Investigation of Abuse, Neglect, or Deficiency in Operation of a Facility or Service
- 0940-5-2-.20 Notice of Non-Compliance and Plan of Compliance
- 0940-5-2-.21 Unannounced Inspection
- 0940-5-2-.22 Inspection Fees
- 0940-5-2-.23 Assistance to Service Recipients When a License is Denied or Revoked

0940-5-2-.01 STATEMENT OF AUTHORITY. The Department of Mental Health and Developmental Disabilities is authorized to license facilities and services operated for the provision of mental health, developmental disability and personal support services in the State of Tennessee by T.C.A. Title 33, Chapter 2, Part 4.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.02 TYPES AND CONDITIONS OF LICENSES.

- (1) Initial License. An initial license is issued to a facility or service to give the licensee an opportunity to implement minimum program requirements and to give the Department an opportunity to evaluate the facility's or service's compliance performance. Initial licenses will not exceed twelve months.
- (2) Full License. A full license is valid for up to one (1) year from the date of issuance and is issued to a facility or service when the licensee demonstrates compliance with the licensure law and applicable rules as determined by the Department.
- (3) Provisional License. A provisional license is issued to a facility or service when it does not meet all of the requirements for a full license. The Department may grant a provisional license if all of the conditions below are satisfied:
 - (a) The facility or service is making a diligent effort to comply with the licensure law and rules; A "diligent effort to comply with rules" is determined by past performance of the facility or service in meeting rules and correcting deficiencies and by commitments to correct existing deficiencies within time frames agreed to by the Department.
 - (b) The continued operation of the facility or service will not endanger the health or safety of individuals being served;
 - (c) The facility or service has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected; The Department will consider the seriousness of the deficiencies and the past performances of the facility or service in determining whether the compliance plan is acceptable; and
 - (d) The facility or service has substantially met the commitments made in the preceding year's compliance plan, if any.

Authority: T.C.A. §§ 33-2-404, 33-2-406, and 33-2-415.

RULEMAKING HEARINGS

0940-5-2-.03 UNLAWFUL OPERATION. No organization may begin delivering services until the Department issues a license. Providing mental health, developmental disability, or personal support services without a license is unlawful and may result in civil and/or criminal sanctions pursuant to T.C.A. §§ 33-2-405 and 33-2-412.

Authority: T.C.A. §§ 33-2-404 and 33-2-405.

0940-5-2-.04 APPLICATION FORM.

- (1) The application for a license is to be made on forms prepared and supplied to the applicant by the Department.
- (2) Each application for a license must be submitted in writing, legible, with all the information requested on the application. The information gathered by the Department on the application is needed pursuant to T.C.A. §§ 33-2-406 to determine the applicant's responsible and reputable character and the applicant's ability to meet the minimum standards for the operation of a facility or service.
- (3) The information to be supplied to the Department is as follows:
 - (a) The name, address, and other background and identifying information of the applicant;
 - (b) A description of the location, design, and type of facility or service to be licensed;
 - (c) The name, address, and other background and identifying information of the person or persons responsible for the operation of the facility or service to be licensed including Social Security number and date of birth; place of residence during the past five years and place of birth; proof of citizenship or evidence of legal immigration status; criminal background check;
 - (d) Personal character references;
 - (e) The signature of the licensee applicant, or of the person charged by the licensee applicant, for certifying the correctness and completeness of the application, and for ensuring compliance with the licensure rules;
- (4) Any such other information as the Department may require.

Authority: T.C.A. §§ 33-2-404 and 33-2-406.

0940-5-2-.05 FEES.

- (1) The applicant must submit fees for the processing of the application prior to the Department's making a determination to grant or to deny licensure. Each initial and renewal application for licensure must be submitted with the appropriate fees. All fees submitted are non-refundable. The fee rate is based on the number of distinct categories of service or facility, as applicable, to be operated at each site. For a residential site, the fee rate is based on

RULEMAKING HEARINGS

the number of beds to be licensed. A fee must be submitted for each facility and or service for which licensure is being sought under the following schedule:

Non-Residential Facility Fees Per Site:

One (1) Distinct Category of Service or Facility	\$ 810.00
Two (2) Distinct Categories of Services and/or Facilities	\$1,010.00
Three (3) Distinct Categories of Services and/or Facilities	\$ 1,220.00
Four (4) Distinct Categories of Services and/or Facilities	\$ 1,420.00
More Than Four (4) Distinct Categories of Services and/or Facilities	\$ 1,620.00

Residential Facility Fees Per Site:

Mental Health Hospital Facilities (Per Bed):	\$ 175.00
Mental Retardation Institutional Habilitation Facilities (Per Bed):	\$ 175.00

All Other Residential Facilities:

Number of Beds	
2-3	\$ 200.00
4-10	\$ 280.00
11-15	\$ 410.00
16-50	\$ 810.00
More than 50 beds	\$ 1,220.00

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.06 APPLICATION PROCESS FOR INITIAL LICENSE.

- (1) The applicant must submit application forms.
- (2) The applicant must submit the required fees for application processing.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) Upon receipt of the completed application and the required fees, the Department will arrange for needed inspections of the proposed site or sites, when applicable.
- (5) The Department will review the application, make any necessary investigations, review the results of the inspections of the proposed site or sites, when applicable, and take one (1) of the following actions:
 - (a) If the review indicates compliance with all requirements for an initial license, the initial license will be issued;
 - (b) If the review indicates deficiencies, the applicant will be notified and must correct deficiencies before a license is issued; or

RULEMAKING HEARINGS

- (c) If the review indicates that a license should not be granted, the applicant will be so notified. Within fifteen (15) calendar days of such notification of denial, the applicant may file a written request for a hearing before the Licensure Review Panel on the denial.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.07 APPLICATION PROCESS FOR LICENSE RENEWAL.

- (1) Prior to the expiration of an initial, full or provisional license, the Department will notify the licensee of the need to submit an application for license renewal. The Department will advise the licensee of the information, fees, and the documents needed to process the renewal application.
- (2) The applicant must submit the renewal application, fee and other information required by licensure.
- (3) The applicant is responsible for any fees charged by other regulatory agencies whose inspection of the facility or service is necessary for the issuance of licenses.
- (4) The Department, when applicable, will conduct or arrange for inspections of the facility's or service's current life safety and environmental conditions, and review the facility's or services program performance history. Dates for unannounced inspections will be random varying from year to year. Inspections will begin no later than six (6) months from the date of issuance of the existing license.
- (5) Upon receipt of the application material and the required fees, the Department will review the application material, the current life safety and environmental conditions, when applicable, and the performance history of the facility or service and take one of the following actions:
 - (a) If the Department determines that all facilities or services operated by the licensee are in compliance with the applicable licensure law and rules, then a full license will be issued;
 - (b) If the Department determines that all facilities or services operated by the licensee do not comply with the applicable licensure law and rules, a provisional license may be issued covering the facility or service not in full compliance; or
 - (c) If the Department determines that a license should not be issued to one or more facilities or services operated by the licensee, the licensee shall be notified of the denial. Within fifteen (15) calendar days of such notification of denial, the licensee may file a written request for a hearing before the Licensure Review Panel on the denial.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-406, and 33-2-407.

RULEMAKING HEARINGS

0940-5-2-.08 DISTINCT CATEGORIES OF FACILITIES AND SERVICES. The licensure rules identify and define distinct categories of facilities or services. These facilities and services must meet applicable life safety, environmental, and minimum program rules based on the type of program services and the needs of the persons served.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-406.

0940-5-2-.09 NONTRANSFERABILITY OF LICENSES. Licenses are not assignable or transferable except as provided by law. A new application must be made and a new license issued before services are provided when there is a change in the ownership of a facility/service or a change of location.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-406.

0940-5-2-.10 TIME LIMITS. - Upon inspection of any facility or service making application for or holding a license, the Department may allow a reasonable time period for facility or service to correct deficiencies found by inspection.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.11 DEEMED COMPLIANCE.

- (1) A facility or service which is accredited or, certified, by any of the following may be deemed by the Department to be in compliance (“deemed compliance status”) with applicable licensure program requirements:
 - (a) Joint Commission on Accreditation of Health Care Organizations (JCAHO);
 - (b) Council on Accreditation of Rehabilitation Facilities (CARF);
 - (c) Social Security Act, Title XIX, Public Law 89-98, as amended (Medicaid) for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) only; or
 - (d) The Accreditation Council on Services for People with Disabilities; or
 - (e) Council on Accreditation for Children and Family Services.
- (2) To be considered for a deemed compliance status determination under this section, the licensee must submit written and official evidence of certification for accreditation to the Department including any cited deficiencies with plan of correction.
- (3) Facilities or services receiving deemed compliance status must also demonstrate compliance with the life safety and environmental rules. Deemed compliance status of the services offered by a facility or service does not alter the operator’s obligation to correct any deficiencies cited during the unannounced inspections required by T.C.A. §§ 33-2-413 or to cooperate with investigations conducted by the Department of reports of abuse, dereliction, or deficiency in the operation of the facility or service. Notwithstanding the deemed compliance of a facility’s services, such a facility is subject to the suspension or revocation of its license under the terms and procedures established in T.C.A. §§ 33-2-407 and the rules of this chapter.

RULEMAKING HEARINGS

- (4) Pursuant to T.C.A. §§ 33-2-403(c), a facility or service which can demonstrate compliance with regulations and standards by a previously acquired license from another state agency is considered in compliance with rules promulgated by the Department to the extent that duplicate inspection and enforcement is necessary.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-406.

0940-5-2-.12 ACCESS TO PREMISES AND INFORMATION. With or without giving notice, representatives of the Department shall have the right to enter upon or into the premises of any facility or service providing mental health, developmental disabilities, or personal support services in order to make inspections deemed necessary to determine compliance with licensure law and rules. The licensee must comply with all reasonable requests of the Department and allow it to obtain information from third parties, including, but not limited to, individuals being served by the facility or service, and or to review all records of the facility or service.

Authority: T.C.A. §§ 33-2-404 and 33-2-413(b).

0940-5-2-.13 GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION.

- (1) The maintenance and renewal of a license is contingent upon evidence of continued compliance with rules and regulations. The Department may deny, suspend or revoke a license on any of the following grounds:
 - (a) Violation of licensure law or rules;
 - (b) Permitting, aiding or abetting the commission of any illegal act in a licensed facility or service;
 - (c) Conduct or practice detrimental to the welfare of individuals being served by a licensed facility or service;
 - (d) The submission of false information to the Department; or
 - (e) The use of subterfuge (for instance, filing through a second party after an individual has been denied a license).
- (2) Unless the Department finds that summary suspension of a license is necessary, all license revocations, suspensions and denials shall be conducted in accordance with the applicable sections of the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Part 5. Summary suspension may only occur when the Department determines that continued operation of a licensed facility or service presents an immediate threat to the health, safety, and welfare of individuals being served. When a summary suspension occurs, proceedings for revocation or other action against the licensee shall be promptly instituted and determined in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, 33-2-408.

RULEMAKING HEARINGS

0940-5-2-.14 EXPIRATION OF LICENSES. The expiration date of all licenses issued by the Department will be indicated on the face of the license. However, when a licensee has made timely and sufficient application for a new license, (including payment of the required fees) the existing license does not expire until the outcome of the application has been determined by the Department. When the application is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the order or a later date fixed by order of the reviewing court.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, and 33-2-408; 4-5-320.

0940-5-2-.15 POSTING OF THE LICENSE. The license certificate must be posted for public viewing in a conspicuous place at the facility or service.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.16 SURRENDER REQUIREMENTS. The license certificate must be surrendered to the Department upon revocation or suspension of the license, upon transfer of ownership of the facility or service, or when the facility or service otherwise ceases to operate.

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-407, 33-2-408.

0940-5-2-.17 EXCLUSIONS FROM LICENSURE.

- (1) The following facilities or services are excluded from the licensure jurisdiction of the Department:
 - (a) A facility that is appropriately licensed by the Department of Health, and whose primary purpose is not the provision of mental health or developmental disability services or a satellite hospital, as defined by rules of the Department of Health, whose primary purpose may be the provision of mental or developmental disability services, and other facilities appropriately licensed by the Department of Health pursuant to T.C.A. §§ 68-11-201.
 - (b) A facility which is operated by the Department of Education, the Department of Correction, the Department of Human Services, or the Department of Children's Services and that affirmatively states that its primary purpose is not the provision of mental health, developmental disability, or personal support services.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.18 WAIVER AUTHORITY. The Department may waive any rule determined to be irrelevant or to pose a hardship. A hardship waiver may be granted only when strict enforcement of a particular requirement would not be in the best interest of service recipients. All waivers granted will be made in writing and entered in the official record of the licensed service or facility. This written document shall include the justification for the waiver. All waivers will be reviewed by the Department and the Licensure Review Panel.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

RULEMAKING HEARINGS

0940-5-2-.19 INVESTIGATION OF ABUSE, DERELICTION, OR DEFICIENCY IN OPERATION OF A FACILITY OR SERVICE.

- (1) The Department will investigate reports or suspicion of abuse, dereliction, or deficiency in the operation of a licensed service or facility in accordance with T.C.A. §§ 33-2-416.
- (2) The licensee shall post a sign in the facility or service displaying the Department's regional toll-free telephone number. The sign must inform service recipients, families, and the public that they may file a complaint with the Department. Any exemptions to posting signs will be determined by the Department.
- (3) The licensee must report to the Department any allegations or suspicion of abuse, dereliction, or deficiency in the operation of the facility or services.
- (4) The licensee must report to the Department any significant occurrences involving the facility/ service or service recipient and staff, "Significant occurrences" may include, but not be limited to occurrences such as accidents, injuries, or death regarding individuals being served; fires, loss of heat/air conditioning, and/or other structural problems with the facility building(s).

Authority: T.C.A. §§ 33-2-403, 33-2-404, 33-2-416.

0940-5-2-.20 NOTICE OF NON-COMPLIANCE AND PLAN OF COMPLIANCE.

- (1) The Department will give a Department-prepared Notice of Non-Compliance to the licensee on a form provided by the Department when an inspection or investigation of a facility/service reveals non-compliance with licensure law or rules.
- (2) The licensee must submit, by the date specified on the Notice of Non-Compliance, a written Plan of Compliance in response to the Notice of Non-Compliance.
- (3) The licensee's written Plan of Compliance shall include a description of the action taken or to be taken in correcting deficiencies, and the date by which each corrective action is completed or to be completed.
- (4) The Department will notify the licensee in writing whether the Plan of Compliance is acceptable and the basis for the decision. When the Plan of Compliance is not acceptable, the Department and licensee may continue to seek agreement. If agreement cannot be reached in a reasonable time, as determined by the Department, the Department may institute sanctions against the license.
- (5) The licensee shall maintain copies of compliance plans in a central location.

Authority: T.C.A. §§ 33-2-403 and 33-2-404.

0940-5-2-.21 UNANNOUNCED INSPECTION. The Department shall make at least one (1) unannounced inspection of each licensed facility/service yearly.

Authority: T.C.A. §§ 33-2-403, 33-2-404, and 33-2-413.

RULEMAKING HEARINGS

0940-5-2-.22 INSPECTION FEES.

- (1) Pursuant to T.C.A. §§ 33-2-414(c), the Department is granted the authority to charge a fee in an amount not to exceed fifty dollars (\$50) for inspection of any facility or service.
- (2) The Department shall invoice the applicant or licensee for each applicable inspection. The applicant or licensee shall pay the inspection fee within thirty (30) days after receipt of the invoice, unless the current license expires before the end of the 30-day period. If the current license expires before the end of the 30-day period, the licensee shall pay the inspection fee before the expiration of the current license.
- (3) The Department may withhold the issuance of a license or suspend an existing license pending the payment of the inspection fee.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-413.

0940-5-2-.23 ASSISTANCE TO SERVICE RECIPIENTS WHEN A LICENSE IS DENIED, SUSPENDED, OR REVOKED. When a license is to be denied, suspended, or revoked, the Department will notify the appropriate state and local agencies which may be able to provide assistance to service recipients by coordinating placement.

Authority: T.C.A. §§ 33-2-403, 33-2-404 and 33-2-414.

REPEALS

- Rule 0940-5-2-.01 Statement of Authority is repealed.
- Rule 0940-5-2-.02 Unlawful Operation is repealed.
- Rule 0940-5-2-.03 Application Form is repealed.
- Rule 0940-5-2-.04 Application Fees is repealed.
- Rule 0940-5-2-.05 Application for an Initial License is repealed.
- Rule 0940-5-2-.06 Application for License Renewal is repealed.
- Rule 0940-5-2-.07 Distinct Facility Categories is repealed.
- Rule 0940-5-2-.08 Number of License Required is repealed.
- Rule 0940-5-2-.09 Nontransferability of Licenses is repealed.
- Rule 0940-5-2-.10 Types and Conditions is repealed.
- Rule 0940-5-2-.11 Time Limits is repealed.
- Rule 0940-5-2-.12 Deemed Compliance is repealed.
- Rule 0940-5-2-.13 Access to Facilities and Information is repealed.
- Rule 0940-5-2-.14 Grounds for Denial, Revocation, or Suspension is repealed.
- Rule 0940-5-2-.15 Expiration of Licenses is repealed.
- Rule 0940-5-2-.16 Posting of License is repealed.
- Rule 0940-5-2-.17 Surrender Requirement is repealed.
- Rule 0940-5-2-.18 Exclusions from Licensure is repealed.
- Rule 0940-5-2-.19 Waiver Authority is repealed.
- Rule 0940-5-2-.20 Investigation of Reported Abuses in Operation of Facility is repealed.
- Rule 0940-5-2-.21 Notice of Non-Compliance and Plan of Compliance is repealed.
- Rule 0940-5-2-.22 Unannounced Inspection is repealed.
- Rule 0940-5-2-.23 Reasonable Notice Inspection is repealed.

RULEMAKING HEARINGS

Rule 0940-5-2-.24 Inspection Fees is repealed.

Rule 0940-5-2-.25 Assistance to Clients when a License is Denied Suspended, or Revoked is repealed.

Authority: *T.C.A. §§ 33-2-403 and 33-2-404.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of November, 2006. (11-13-06)

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 Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 18th day of January, 2007.

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, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (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, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1045-2-.03, Examinations, is amended by inserting the following language as new paragraph (3) and renumbering the current paragraphs (3) and (4) as paragraphs (4) and (5):

- (3) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
 - (a) The Board shall mail a jurisprudence examination to all applicants for licensure.
 - (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is sent to the Board's administrative office located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville TN 37243.
 - (c) There is no fee for the jurisprudence examination.
 - (d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of optometry (Tennessee Code Annotated §§ 63-8-101, et seq., and Chapter 1045-2 of the Official Compilation, Rules and Regulations of the State of Tennessee). Copies of the applicable statutes and regulations can be obtained at the Board's Internet web page, and are also available upon request from the Board's administrative office.
 - (e) The format of the examination shall be "open-book."

RULEMAKING HEARINGS

- (f) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.
- (g) If the Board determines that the applicant has failed to successfully complete the jurisprudence examination, the applicant will be mailed another examination and he/she must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-8-112, and 63-8-115.

Rule 1045-2-.05, Continuing Education, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (2) (a) but not its parts and substituting instead the following language, and is further amended by deleting part (2) (a) 1. in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a), the new subparagraph (2) (a) but not its parts, and the new part (2) (a) 1. shall read:

- (1) (a) For those who are therapeutically certified, a minimum of twenty (20) of the thirty (30) hours of continuing education is required in courses pertaining to ocular disease and related systemic disease, as described in subparagraph (2) (c). At least one (1) of these twenty (20) hours shall be a course designed specifically to address prescribing practices.
- (2) (a) Except for grand clinical rounds and courses provided by the Tennessee Academy of Optometry, and except for the one (1) hour course designed specifically to address prescribing practices, all continuing education courses shall be approved by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education (COPE).
- (2) (a) 1. Providers of grand clinical rounds, providers of the one (1) hour course designed specifically to address prescribing practices and the Tennessee Academy of Optometry shall submit the information required by subparagraph (2) (b) at least thirty (30) days prior to the actual date of the grand clinical rounds or course.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-8-112, and 63-8-119.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of November, 2006. (11-18-06)

RULEMAKING HEARINGS

BOARD OF RESPIRATORY CARE - 1330

There will be a hearing before the Tennessee Board of Respiratory Care to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-27-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CST) on the 4th day of January, 2007.

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, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (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, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENT

Rule 1330-1-.06, Fees, is amended by deleting subparagraphs (1) (a), (1) (f), (3) (a) and (3) (d) in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (3) (h) in its entirety, so that as amended, the new subparagraphs (1) (a), (1) (f), (3) (a) and (3) (d) shall read:

- (1) (a) Total Application fee - A fee to be paid by all applicants seeking initial licensure, including those seeking licensure by reciprocity. This fee consists of the Application Fee and License Fee. In cases where an applicant is denied licensure or the application file is closed due to abandonment, only the portion representing the License Fee will be refundable.
- (1) (f) State Regulatory fee - A non-refundable fee to be paid by all individuals with all applications.
- (3) (a) Total Application Fee
 - 1. Application Fee \$120.00
 - 2. License Fee 80.00

RULEMAKING HEARINGS

Total Application Fee	\$200.00
(3) (d) Renewal (biennial) Fee	150.00

Authority: *T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, and 63-27-104.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 17th day of November, 2006. (11-07-06)



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 November 1, 2006 and ending November 30, 2006.

A handwritten signature in black ink that reads "Riley C. Darnell". The signature is written in a cursive style.

RILEY C. DARNELL
SECRETARY OF STATE