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RILEY C. DARNELL
Secretary of State

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PREFACE

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

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

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

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

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

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

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Back Issues - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

Copies of Rules from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

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ANNOUNCEMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

ATTORNEY GENERAL'S GUIDELINES FOR EVALUATION OF PROPOSED REGULATORY OR ADMINISTRATIVE ACTIONS TO AVOID UNCONSTITUTIONAL TAKINGS OF PRIVATE PROPERTY

I. PURPOSE

These guidelines are submitted by the Office of the Attorney General pursuant to Chapter 924 of the Public Acts of 1994 (codified at T.C.A. § 12-1-201, *et seq.*). Section 4 of the Act requires the Attorney General to develop guidelines to assist state agencies in the identification and evaluation of government actions that may result in an unconstitutional taking of private property, in order to avoid an unnecessary burden on the public treasury and unwarranted interference with private property rights. The guidelines establish a basic framework for agencies to use in their internal evaluations of the takings implications of administrative and regulatory policies and actions. The guidelines do not prevent an agency from making an independent decision about proceeding with a specific policy or action which the decisionmaker determines is authorized by law.

These guidelines are intended solely as internal and predecisional management aids for agency decisionmakers and should not be construed as an opinion by the Attorney General on whether a specific action constitutes a taking. A private party shall not be deemed to have a cause of action against an agency for failure to follow any suggested procedures contained in the guidelines.

II. SCOPE

An agency should evaluate, for their takings implications, its administrative and regulatory policies and actions that affect, or may affect, the use or value of private real property in accordance with the framework established in these guidelines, including, but not limited to, regulations that propose or implement licensing, permitting or certification requirements, conditions or restrictions otherwise imposed by an agency on private property use, and any actions relating to or causing the physical occupancy or invasion of private property. These guidelines are limited to examination of takings of private real property and are not intended to govern or affect issues such as validity of searches or investigative or discovery demands which are controlled by other statutory and constitutional law.

The following policies and actions are excluded from evaluation under these guidelines:

1. The exercise of the power of eminent domain;
2. The forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law;
3. Orders issued by a state agency or court of law that result from a violation of law and that are authorized by statute; and
4. The discontinuation of government programs.

Examples of agency actions that would be excluded under these guidelines include, but are not limited to, tax enforcement and collection activities pursuant to T.C.A. § 67-1-1401, *et seq.*, or other authority.

III. GENERAL PRINCIPLES

A. Constitutional and Statutory Framework

The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. Article 1, Section 21 of the Tennessee Constitution provides that “[n]o man’s particular services shall be demanded, or property taken, or applied to public use, . . . without just compensation. . . .” The government may not, therefore, take property except for public purposes within its constitutional authority and only upon payment of just compensation.

The State has historically used its power of eminent domain under T.C.A. § 29-16-101, *et seq.* to acquire private property for a public purpose, such as a highway or recreation area, and in so doing has compensated property owners through a formal condemnation proceeding. The government, however, may also become liable for payment of just compensation to private property owners without the initiation of formal proceedings, when private property has either been physically occupied or invaded by the government on a permanent or temporary basis, or so affected by governmental regulation as to have been effectively taken despite the fact the government has neither physically invaded, confiscated nor occupied the property. In contrast to the formal exercise of eminent domain, the private property owner can obtain compensation by filing an “inverse condemnation” suit.

B. Nature of a Taking

A taking of private property rights may occur when permanent or temporary government actions result in the physical occupancy of property, the physical invasion of property, either directly or indirectly (see discussion in B. 2. below), or the regulation of property.

1. Physical Occupancy

As a general rule, a physical occupation of property by the government which is permanent is a taking, regardless of how slight the occupancy, the minimal economic impact on the property owner or whether the government action achieves an important public benefit. Aside from formal condemnation exercises, examples of physical occupancy takings include permanent utility easements and access easements. In some circumstances, however, even a temporary access easement may be deemed to be a physical taking. See discussion in B. 2. below.

2. Physical Invasion

The concept of permanent physical occupation does not necessarily require that in every instance the occupation be exclusive or continuous and uninterrupted. Physical invasions of property may also give rise to a taking where the invasions are of a recurring and substantial nature, or of finite duration, and thereby amount to temporary takings. Examples of physical invasion takings may include, among others, flooding and water related intrusions resulting from government projects, access easements, and aviation easement intrusions. The last example is not necessarily limited to direct overflights, but may result where there is continuous interference, through noise, pollution or vibration, with the beneficial use and enjoyment of property.

3. Regulatory Takings

Land use regulations that affect the value, use, or transfer of private property may constitute a taking if the regulations are adjudged to go too far. The greater the deprivation of use, the greater the likelihood that a taking will be found.

While there is no set formula for determining when government action constitutes a taking, an agency should consider the following criteria:

- a. Whether the policy or action will substantially advance a legitimate public purpose of the enabling statute, where the policy or action is in furtherance of obligations imposed or authorized by statute. If the regulation fails to substantially advance a legitimate state interest, goes beyond the government's powers under common law nuisance doctrine, or no nexus exists between the asserted government purpose and the regulation, a taking may be found.
- b. Whether the regulation denies the landowner all economically viable use of his property or substantially interferes with his reasonable investment-backed expectations. In this regard, the timing of the regulatory enactment with respect to the landowner's acquisition of title may be relevant, but not necessarily dispositive.
- c. If the regulation advances a legitimate public purpose, but is not reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Regulation of an individual's property that conditions approval of a permit/development on the dedication of some property to public use must not be disproportionate to the degree to which the individual's property use is contributing to the overall problem. The less direct, immediate and demonstrable the contribution of the property-related activity to the harm to be addressed, the greater the risk that a taking will be found.
- d. The degree to which a regulatory action closely resembles, or has the effect of, physical invasion or occupation of property. For example, an intended policy or action that totally abrogates an essential property interest, such as the right to exclude others by imposing an access easement, may, in certain circumstances, constitute a taking. See discussion in B. 2. above and C. 1. below.

C. Special Situations and Suggested Procedures

When implementing a regulatory policy or action and evaluating the takings implications of that policy or action, agencies should consider the following special factors and suggested procedures:

1. Permitting and Certification Programs

The programs of many agencies require private parties to obtain permits or certification before making specific uses of, or acting with respect to, private property. An agency may place conditions on the granting of such permits or certification, or deny the same, without necessarily effecting a taking for which compensation is due, however, the agency should first consider the following factors in determining whether a taking may result:

- a. Whether the government action will deprive the owner of essentially all economically viable or productive use of his property (see discussion below in C. 2. regarding economic impact of regulation); and

- b. The degree to which the state imposed restriction interferes with the owner's reasonable investment-backed expectations; and
- c. Whether the condition imposed by the government will result in a permanent physical occupation or invasion of the property, such as an access easement; and
- d. Whether a condition that requires a dedication of property to public use is reasonably related or roughly proportional to the projected impact of the landowner's proposed use of the property. Where public health and safety is the asserted regulatory purpose, then the health and safety risk posed by the property use must be identified with as much specificity as possible and should be real and substantial, and not merely speculative.

2. Assessing Economic Impact of the Regulation as Applied

In assessing whether a proposed policy or action may effect a taking of private property, an agency may want to consider the economic impact of a regulation by examining the following factors:

- a. The character and present use of the property, as well as the character and anticipated duration of the proposed or intended government action; and
- b. The likely degree of economic impact on all identified property and economic interests. A mere diminution in the value of the property to be regulated by the government's denial of the highest and best use of the property will not generally, by itself, amount to a taking (but see discussion below in C. 3. regarding the "parcel as a whole"); and
- c. Whether the proposed policy or action carries benefits to the private property owner that offset or otherwise mitigate the adverse economic impact of the proposed policy or action; and
- d. Whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

3. The "Parcel as a Whole" Analysis

In determining the economic impact of a proposed or intended government action, an agency should consider the impact on the "parcel as a whole," and not merely the part of the parcel that is subject to regulation. The parcel as a whole is not limited by its geographic dimensions, but also has a temporal aspect defined by the term of years of the owner's interest in the land. Generally, if an owner has been denied economic use of a segment of a parcel, but retains viable economic use of other segments of the same parcel, a taking may not result.

Paul G. Summers
Attorney General & Reporter

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400**PETITION FOR DECLARATORY ORDER
NOTICE OF HEARING**

(As required Under T.C.A. §4-5-224)

1. Petitioner's Name: Jack McCormick
2. Petitioner's Attorneys: Joe McCaleb
Address: 315 West Main Street, Suite 112
Hendersonville, TN 37075
Telephone Number: 615-826-7245
3. Organization, if any, that the Petitioner represents: N/A
4. Summary of the statutes and rules at issue and the relief requested:

The Division of Water Supply of the Department of Environment and Conservation administers the Safe Drinking Water Act, T.C.A. §§68-221-701, et seq. This Act provides for a comprehensive system of regulation of the construction, operation and maintenance of public water systems and is the basis for the U.S. EPA having given the Department primacy to regulate public water systems in Tennessee. The Division has determined that one of the wells proposed as an additional source of water for Savannah Valley produces ground water that is not under the direct influence of surface water. The petitioner, a customer of the Savannah Valley Utility District, challenges that decision of the Division. He specifically alleges that the decision was in violation of Division rules 1200-5-1-.17 and .31 as well as Division guidance. The petition asks that the Board reverse the decision, require additional evaluation and sampling of the source before the well is placed into production.

The Board has voted to convene a contested case in this matter and the hearing is scheduled for September 24-25, 2002.

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

Administrative Procedures Docket Number: 04.02-031364A

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

Copies must also go to: Alan M. Leiserson
Dept. of Environment & Conservation
Office of General Counsel
312 8th Avenue, North
25th Floor, William R. Snodgrass Bldg.
Nashville, TN 37243-1548

and Joe McCaleb, at the above address

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180**ANNOUNCEMENT OF FORMULA RATE OF INTEREST**

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

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

Fred R. Lawson
Commissioner

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 September 2002 is 9.52 per cent 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 5.52 per cent.

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.

Fred R. Lawson
Commissioner

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 month of July 2002. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3074.

SEQ	FILE DATE	DEPARTMENT. AND DIVISION	TYPE OF FILING	DESCRIP- TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-01	July 1, 2002	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.01 Definitions 1200-13-14-.02 Eligibility 1200-13-14-.03 Enrollment, Disenrollment, Re-enrollment and Reassignment 1200-13-14-.04 Covered Services 1200-13-14-.05 Enrollee Cost Sharing 1200-13-14-.06 Managed Care Organizations 1200-13-14-.07 Managed Care Organization Payment 1200-13-14-.08 Providers 1200-13-14-.09 Third Party Resources 1200-13-14-.10 Exclusions 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits 1200-13-14-.12 Other Appeals by TennCare 1200-13-14-.13 TennCare Partners State- Only Program	George Woods Bureau of TennCare 729 Church St Nashville, TN 37247-6501 (615) 741-0145	July 1, 2002 through Dec 13, 2002
07-02	July 1, 2002	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.01 Definitions 1200-13-13-.02 Eligibility 1200-13-13-.03 Enrollment, Disenrollment, Re-enrollment and Reassignment 1200-13-13-.04 Covered Services 1200-13-13-.05 Enrollee Cost Sharing 1200-13-13-.06 Member Abuse and Overutilization of TennCare Program 1200-13-13-.07 Providers 1200-13-13-.08 Third Party Resources 1200-13-13-.09 Exclusions 1200-13-13-.10 Appeal of Adverse Actions Affecting TennCare Services or Benefits 1200-13-13-.11 Other Appeals by TennCare Applicants and Enrollees	George Woods Bureau of TennCare 729 Church St Nashville, TN 37247-6501 (615) 741-0145	July 1, 2002 through Dec 13, 2002

SEQ	FILE DATE	DEPARTMENT. AND DIVISION	TYPE OF FILING	DESCRIP- TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-03	July 1, 2002	1240 Human Services Family Assistance	Public Necessity Rules	Amendments	<i>Chapter 1240-1-50</i> <i>Standard of Need/Income</i> 1240-1-50-.20 Standard Of Need/Income	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	July 3, 2002 through Dec 15, 2002
07-04	July 5, 2002	1240 Human Services Division of Family Assistance	Rulemaking Hearing Rules	Amendments	<i>Chapter 1240-1-46</i> <i>Family Assistance Unit Families First Program</i> 1240-1-46-.02 Filing Unit And Assistance Group <i>Chapter 1240-1-47</i> <i>Non-Financial Eligibility Requirements Families</i> <i>First Program</i> 1240-1-47-.12 Verification Of Alien Status 1240-1-47-.14 Age Requirements 1240-1-47-.15 School Attendance 1240-1-47-.27 Unemployment Of A Parent <i>Chapter 1240-1-48</i> <i>Child Support Requirements</i> 1240-1-48-.04 Cooperation In Child Support Activities <i>Chapter 1240-1-49</i> <i>Families First Employment and Training</i> 1240-1-49-.02 Exemption Determination 1240-1-49-.06 Voluntary Quit <i>Chapter 1240-1-50</i> <i>Financial Eligibility Requirements Families First</i> <i>Program</i> 1240-1-50-.05 Exempt Resources 1240-1-50-.11 Payments/Benefits Excluded In Eligibility Determination 1240-1-50-.13 Determination Of Available Income Repeal 1240-1-50-.21 Families First Supplemental Payments Amendments <i>Chapter 1240-1-53</i> <i>Families First Intentional Program Violations</i> 1240-1-53-.06 Court Actions On Consent Agreements	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	Sept 18, 2002

SEQ	FILE DATE	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-04, cont.					<i>Chapter 1240-1-54 Child Care Families First Program 1240-1-54-.02 Transitional Child Care Coverage</i>		
07-05	July 5, 2002	1200 Health Board For Licensing Health Care Facilities 0620 Finance and Administration Bureau of TennCare	Emergency Rules	New Rule Amendments	<i>Chapter 1200-8-5-.01 Behavioral Health Units in Nursing Facilities 1200-8-5-.01 Special Services 1200-13-1-.06 Provider Reimbursement 1200-13-1-.10 Criteria for Medicaid Reimbursement of Care in Nursing Facilities</i>		July 5, 2002 through Dec 17, 2002
07-06	July 8, 2002	1240 Human Services Family Assistance Division	Public Necessity Rules	Amendments	<i>Chapter 1240-1-50 Standard of Need/Income 1240-1-50-.20 Standard Of Need/Income</i>	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	July 8, 2002 through Dec 20, 2002
07-09	July 12, 2002	1240 Human Services Rehabilitation Services	Rulemaking Hearing Rules	Amendments to chapters	<i>1240-8-2 General Rules Chapter 1240-8-3 Administration Chapter 1240-8-4 Services to Individuals Chapter 1240-8-5 Services to Individuals: Related Provisions Chapter 1240-8-6 Services to Groups, Construction and Established Programs Chapter 1240-8-7 Records and Reports Chapter 1240-8-8 Grants and Projects Chapter 1240-8-11 Supported Employment Services Program</i>	Phyllis Simpson TN Twr, 26th Fl 312 8th Ave N Nashville, TN 37243 (615) 741-9534	Sept 25, 2002
07-11	July 15, 2002	0400 Environment and Conservation Division of Water Supply	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-5-1 Public Water Systems 1200-5-1-.04 Definitions 1200-5-1-.06 Maximum Contaminant Levels 1200-5-1-.09 Inorganic Chemical Sampling and Analytical Requirements</i>	Robert Foster Water Supply 6th Fl L&C Twr Nashville 37243-1549 615-532-0155	Sept 28, 2002

SEQ	FILE DATE	DEPARTMENT. AND DIVISION	TYPE OF FILING	DESCRIP- TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-11, cont.					1200-5-1-.10 Organic Chemical Sampling1200-5-1-.19 1200-5-1-.26 Volatile Organic Chemicals 1200-5-1-.35 Consumer Confidence		
07-12	July 18, 2002	0400 Environment and Conservation Radiological Health	Rulemaking Hearing Rules	New Rules	<i>Chapter 1200-2-4 General Provisions</i> 1200-2-4-.11 Posting of Notices to Workers 1200-2-4-.12 Instructions to Workers 1200-2-4-.13 Deliberate Misconduct <i>Chapter 1200-2-8 Radiation Safety Requirements for Industrial Radiography Operations</i> 1200-2-8-.15 Recordkeeping requirements 1200-2-8-.16 Schedule RHS 8-35: Radiographer Certification 1200-2-8-.161 Schedules <i>Chapter 1200-2-10 Licensing and Registration</i> 1200-2-10-.35 Training for an Authorized Nuclear Pharmacist 1200-2-10-.36 Radiological Criteria for License Termination 1200-2-10-.37 Schedule 10-6: Determination of A ₁ and A ₂ <i>Chapter 1200-2-4 General Provisions</i> 1200-2-4-.04 Definitions <i>Chapter 1200-2-5 Standards for Protection Against Radiation</i> 1200-2-5-.32 Definitions 1200-2-5-.40 Radiation Protection Programs 1200-2-5-.52 Determination of External Dose from Airborne Radioactive Material 1200-2-5-.60 Dose Limits for Individual Members of the Public 1200-2-5-.92 Use of Individual Respiratory Protection Equipment 1200-2-5-.111 Posting Requirements	Alan Leiserson OGC TN Twr 25th Fl 812 8th Ave N Nashville TN 37243-1548 615-532-0131	Oct 1, 2002
				Amendments			

SEQ	FILE DATE	DEPARTMENT. AND DIVISION	TYPE OF FILING	DESCRIP- TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-12, cont.					<p>1200-2-5-.125 Transfer for Disposal and Manifests</p> <p>1200-2-5-.130 General Records Provisions</p> <p>1200-2-5-.133 Determination of Prior Occupational Dose</p> <p>1200-2-5-.135 Records of Individual Monitoring Results</p> <p>1200-2-5-.141 Notification of Incidents</p> <p>1200-2-5-.142 Reports to Individuals of Exposure to Radiation</p> <p>1200-2-5-.143 Reports of Exposures, Radiation Levels and Concentrations of Radioactive material Exceeding the Limits</p> <p>1200-2-5-.145 Notifications, Records and Reports of Misadministration</p> <p><i>Chapter 1200-2-7</i> <i>Use of Sealed Radioactive</i> 1200-2-7-.04 Teletherapy</p> <p><i>Chapter 1200-2-8</i> <i>Radiation Safety Requirements for Industrial Radiography Operations</i> 1200-2-8-.03 Definitions. 1200-2-8-.04 Equipment Control 1200-2-8-.05 Personal Radiation Safety Requirements for Radiographers and Radiographer's Assistants</p> <p><i>Chapter 1200-2-10</i> <i>Licensing and Registration</i> 1200-2-10-.13 Special Requirements for Issuance of Specific Licenses 1200-2-10-.14 Specific Licenses for Certain Groups of Medical Uses of Radioactive Material 1200-2-10-.16 Specific Terms and Conditions of Licenses 1200-2-10-.27 1200-2-10-.30 Transportation of Radioactive Materials</p> <p><i>Chapter 1200-2-12</i> <i>Radiation Safety Requirements for Well</i></p>		

SEQ	FILE DATE	DEPARTMENT. AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-12, cont.					<i>Logging</i> 1200-2-12-.03 Definitions 1200-2-12-.23 Security		
07-14	July 19, 2002	1020 Architectural and Engineering Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0120-1 Registration Requirements and Procedures</i> 0120-1-.10 Education and Experience Requirements - Engineer 0120-1-.11 Education and Experience Requirements - Architect <i>Chapter 0120-2 Rules of Professional Conduct</i> 0120-2-.02 Proper Conduct of Practice <i>Chapter 0120-4 Interior Designers</i> 0120-4-.02 Applicability 0120-4-.03 Applications 0120-4-.05 Experience 0120-4-.08 Renewal of Registration 0120-4-.09 Registration Without Examination <i>Chapter 0120-5 Continuing Education</i> 0120-5-.10 Records 0120-5-.12 Noncompliance	Christy A. Allen Regulatory Boards and Fire Prevention TN Twr 25th Fl 312 8th Ave N Nashville TN 37243 615-741-3072	Oct 2, 2002
07-15	July 22, 2002	1045 Board of Optometry	Rulemaking Hearing Rules	Amendments	<i>Chapter 1045-2 General Rules Governing the Practice of Optometry</i> 1045-2-.02 Licensure Process 1045-2-.04 Licensure Renewal 1045-2-.05 Continuing Education 1045-2-.06 Board Meetings, Members' Authority and Records	Glen Watson OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Oct 5, 2002
07-18	July 22, 2002	1155 Registration in Podiatry	Rulemaking Hearing Rules	Amendments	<i>Chapter 1155-2 General Rules and Regulations Governing the Practice of Podiatry</i> 1155-2-.01 Definitions 1155-2-.09 Licensure Renewal 1155-2-.12 Continuing Education 1155-2-.15 Disciplinary Actions, Civil Penalties, Assessment of Costs,	Glen Watson OGC 26th Fl TN Twr 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Oct 5, 2002

SEQ	FILE DATE	DEPARTMENT. AND DIVISION	TYPE OF FILING	DESCRIP- TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-18, cont.					and Subpoenas <i>Chapter 1155-3 General Rules Governing Podiatry X-Ray Operators</i> 1155-3-.05 Renewal		
07-19	July 25, 2002	0620 Finance and Administration Bureau of TennCare	Rulemaking Hearing Rules		<i>Chapter 1200-13-6 Nursing Facility Level I Program</i> 1200-13-6-.07 Submission of Cost Reports By Providers <i>Chapter 1200-13-8 Skilled Nursing Home Program</i> 1200-13-8-.08 Submission of Cost Reports By Providers	George Woods Bureau of TennCare 729 Church St Nashville, TN 37247-6501 615) 741-0145	Oct 8, 2002
07-20	July 25, 2002	0870 Massage Licensure Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 0870-1 General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.01 Definitions 0870-1-.04 Licensure and Provisional Licensure Process 0870-1-.05 Establishment Licensure Process 0870-1-.06 Fees 0870-1-.09 License Renewal 0870-1-.12 Continuing Education 0870-1-.13 Disciplinary Grounds, 0870-1-.15 Change of Name and/or Address	Robert J. Kraemer OGC 26th Fl TN Tower 312 8th Ave N Nashville, TN 37247-0120 615-741-1611	Oct 8, 2002
07-21	July 26, 2002	0400 Environment and Conservation	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-1-11 Hazardous Waste Management</i> 1200-1-11-.01 Hazardous Waste Management 1200-1-11-.02 Identification and Listing of Hazardous Waste System: General 1200-1-11-.08 Fee System for Transporters, Storers, Treaters, Disposers, and Certain Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters 1200-1-11-.10 Land Disposal Restrictions	Gerald Ingram Solid Waste Mgmt 5th Fl L&C Twr 401 Church St Nashville TN 37243-1535	Oct 8, 2002

SEQ	FILE DATE	DEPARTMENT. AND DIVISION	TYPE OF FILING	DESCRIP- TION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
07-28	July 29, 2002	1150 Occupational and Physical Therapy Examiners’ Committee of Physical Therapy	Rulemaking Hearing Rules	Amendments	<i>Chapter 1150-1 General Rules Governing</i> 1150-1-.01 Definitions 1150-1-.09 Renewal of License 1150-1-.15 Disciplinary Actions, Civil Penalties, and Assessment of Costs	Nicole Armstrong OGC 26th Fl TN Twr 312 8th Ave NNashville, TN 37247-0120 615-741-1611	Oct 12, 2002

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

- 0080 - Department of Agriculture - Division of Animal Industries - Emergency Rules promulgated in response to the threat of Chronic Wasting Disease introduction into the State of Tennessee, chapter 0080-2-1 Health Requirements for Admission and Transportation of Livestock and Poultry, 5 T.A.R. (May 15, 2002). Filed April 15, 2002; effective through September 27, 2002. (04-16)
- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency Rules relating to the aerial application of pesticides and the persons licensed as aerial pesticide applicators, Chapter 0080-6-15 Rules and Regulations Governing Commercial Aerial Applicators of Pesticides, 6 T.A.R. (June, 2002). Filed June 28, 2002; effective through December 10, 2002. (06-38)
- 1660 - Wildlife Resources Commission - Boating Division - Emergency rules regarding waterway zoning on Dale Hollow Lake, chapter 1660-2-7 Rules and Regulations Governing Operations of Vessels, 6 T.A.R. (June, 2002). Filed June 6, 2002; effective through November 18, 2002. (06-01)

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

AND

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

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

We are herewith submitting proposed new rules of the Tennessee Department of Health, Board for Licensing Health Care Facilities, and amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation under the emergency provisions of the Uniform Administrative Procedures Act.

Pursuant to existing laws and regulations governing the licensure and operation of health care facilities (Tenn. Code Ann. §§ 68-11-201, et seq.; Rule 1200-8-5), structurally distinct parts of a nursing home may be designated as special care units for ambulatory residents with dementia or Alzheimer's Disease and related disorders. Currently, a significant range of individuals are being placed in the special care units. Aggressive individuals exhibiting complex dementia problems could be placed in a unit staffed, funded and equipped for treating only frail late-term Alzheimer's patients. According to statistics compiled by the Department of Health, there were 1,081 instances of abuse, neglect, and misappropriation of funds reported in nursing homes last year.

Commencing July 1, 2002, and upon appropriation of funds by the Legislature, the State has determined to implement a three year pilot program that will allow certain facilities with existing designated units to provide more extensive psychological and behavioral health care for the growing population of individuals in need of such services. The State will receive additional federal funding with which to operate the pilot program. Additional services to be made available through the program include:

- (1) Enhanced patient assessment procedures to document behaviors, interventions, and effectiveness of behavior management and/or medication;
- (2) Enhanced patient monitoring through the completion of a new MDS evaluation at least every 180 days or at a time of significant change to determine if a patient can be moved to Level 1 care; and
- (3) Improved community support.

Facilities participating in the pilot program will only admit patients to the special care unit who meet very specific, condition-based, criteria. This will ensure that nursing facilities in the pilot program will be limited to treating only those patients requiring significant behavioral health services.

The attached emergency rules, promulgated pursuant to Tenn. Code Ann. § 4-5-208, will allow the State to implement the pilot program on July 1, 2002. Based on the demonstrated need for the program described above, including the fact that many nursing facilities have existing patients who need more extensive behavioral health services than the facilities are capable of providing without the program, the agency finds that an immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by Tenn. Code Ann. §§ 4-5-201, et seq. would not adequately protect the public.

Therefore, the Department of Health, Board for Licensing Health Care Facilities and the Department of Finance and Administration, Bureau of TennCare hereby proceed without prior notice or hearing to adopt these emergency rules.

For a copy of these emergency rules, contact Steve Goodwin at the Department of Health by mail at 425 5th Avenue North, Cordell Hull Building, 1st Floor, Nashville, Tennessee or by telephone at (615) 741-7598; or George Woods at the Bureau of TennCare by mail at 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0145.

James E. Roth, MD
Chairman
Board for Licensing Health Care Facilities
Tennessee Department of Health

Manny Martins
Deputy Commissioner
Tennessee Department of Finance and Administration

**EMERGENCY RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES
AND OF
THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-8-5
BEHAVIORAL HEALTH UNITS IN NURSING FACILITIES**

AND

**CHAPTER 1200-13-1
GENERAL RULES**

1200-8-5-.01 SPECIAL SERVICES: Behavioral Unit pilot program. Structurally distinct parts of a nursing home may be designated as special care units for patients with dementia, cognitive disorders, psychiatric disorders, post-traumatic stress disorders, mania, schizophrenia, major depression, and mood disorders. These conditions result in certain behaviors that require daily behavior management programs and/or pharmacological interventions that cannot be managed in a less restrictive setting. The unit shall provide goal-directed, comprehensive and interdisciplinary services directed at attaining the highest practicable level of physical, affective, behavioral and cognitive functioning. Units which hold themselves out to the public as providing specialized behavior services shall comply with provisions T.C.A. 68-11-1404 and shall be in compliance with the following minimum standards:

- (1) In order to be admitted to the Behavioral Unit:
 - (a) A diagnosis of one or more of the above mentioned conditions must be made by a physician. The specific etiology causing the behavior shall be identified to the best level of certainty prior to admission to the special care unit; and,
 - (b) The need for admission must be determined by an interdisciplinary team consisting of at least a physician experienced in the management of the patients with these diagnoses, mental health professional, a registered nurse, and a relative, guardian, or patient care advocate on behalf of the patient.
- (2) All patients qualifying for admission to the Behavioral Unit, regardless of payer source, shall be classified in the following RUGs categories: BA1; BA2; BB1; BB2; CA2; CB1; CB2; CC1; CC2; IA1; IA2; IB1 and IB2. Patients classified in the above categories have behavioral problems, are clinically complex, or have impaired cognition.

- (3) Behavioral Units shall be separated from the remaining portion of the nursing home by a locked door and must have extraordinary and acceptable fire safety features and policies, which ensure the well being and protection of the patients.
- (4) The patients must have direct access to a secured, therapeutic outdoor area. This outdoor area shall be designed and maintained to facilitate emergency evacuation.
- (5) There must be limited access to the designated unit so that visitors and staff do not pass through the unit to get to other areas of the nursing home.
- (6) Each unit must contain a designated dining/activity room, which shall accommodate 100 percent seating for the patients.
- (7) Corridors or open spaces shall be designed to facilitate ambulation and activity, and shall have an unobstructed view from the central working or nurses' station.
- (8) Increased assistance with maintaining nutritional needs with focus on frequent carbohydrate and protein snacks, nutritious finger foods, and extra fluids with increased vitamins, minerals and electrolytes.
- (9) Assessment procedures to document behaviors, interventions, and effectiveness of behavior management and/or medication.
- (10) New MDS at least every 180 days or at time of significant change in order to determine if patient can move to Level I care.
- (11) The Behavioral Unit shall have a structured, therapeutic activities program daily.
- (12) The designated unit shall provide a minimum of 3.5 hours of direct care to each patient every day, including .75 hours of licensed nursing personnel time. Direct care shall not be limited to nursing personnel time and may include direct care provided by dietary staff, social workers, administrator, therapists, activities, psychiatric services, and other caregivers, including volunteers.
- (13) A physician who has specialized training and experience in the care of individuals with severe behavioral conditions shall be responsible for the medical direction and medical oversight of the Behavioral unit. He/she would assist with the development and evaluation of policies and procedures governing the provision of medical service in the unit.
- (14) A clinical psychologist with at least one-year of training shall be available on staff or a consulting basis to work with the patients and the unit.
- (15) A transfer agreement with an acute psychiatric care facility is required and the Behavioral Unit patient has priority readmission status to the unit as his or her condition may warrant.
- (16) In addition to the classroom instruction required in the nurse aide-training program, each nurse aide assigned to the unit shall have 40 additional hours of classroom instruction. This program shall include instruction in the following subject areas:
 - (a) **Dealing with dysfunctional behavior and catastrophic reactions in the patient;**
 - (b) **Identifying and alleviating safety risks to the patient;**
 - (c) **Providing assistance in the activities of daily living for the patient;**

- (d) Communicating with the families and other persons interested in the patient;
 - (e) Charting and measuring behavior; and
 - (f) Behavior intervention techniques.
- (17) Each patient shall have a treatment plan developed by facility staff that shall be reviewed monthly and implemented by an interdisciplinary treatment team consisting of at least a physician experienced in the management of the patients with these behaviors, a registered nurse, a social worker, psychiatric professional, activity coordinator, and a relative, guardian, or patient care advocate for the patient.
- (18) A protocol for identifying and alleviating job stress among staff on the special care unit must be developed, implemented, and administered.
- (19) The staff of the unit shall organize a support group for families of unit patients and non-patients from the community which meets at least quarterly for the purpose of:
- (a) Providing ongoing education for the families;
 - (b) Permitting families to give advice about treatment for patients and non-patients;
 - (c) Alleviating stress in family member; and
 - (d) Resolving special problems of unit patients and non-patients.
- (20) When the interdisciplinary team determines that discharge of a patient to another facility or community-based program is appropriate, a discharge plan shall be implemented which is designed to assist and support the patients' family and caregiver in the transition to the new setting.
- (21) Program staff shall be available post-discharge, for a period not to exceed thirty days, on a fee for service basis to act as a continuing resource for the patient, family or caregiver. The fees charged for transitional services shall be in addition to the facility's normal reimbursement for Behavioral Unit patients. However, the fee shall not exceed the facility's cost of providing the transitional service.
- (22) Program staff shall be available for consultative services to community-based groups that provide behavioral health programs. The facility should serve as a community resource for treatment advice and clinical training. The fees charged for consultative services shall be in addition to the facility's normal reimbursement for Behavioral Unit patients. However, the fee shall not exceed the facility's cost of providing the consultative service.
- (23) The facility shall create a marketing plan describing the community services to be provided, method of advertisement, and cost. Marketing plans and promotional materials are to be approved by the Bureau of TennCare no less than annually.

Authority: T.C.A. §§4-5-208, 68-11-202, 68-11-204, and 68-11-209.

AMENDMENT

Rule 1200-13-1-.06 Provider Reimbursement is amended by adding a new paragraph (5) and renumbering the present paragraph (5) as (6) and subsequent paragraphs renumbered accordingly so as amended the new paragraph (5) shall read as follows:

(5) Behavioral Unit Pilot Program.

- (a) Behavioral Unit pilot program facilities shall be reimbursed for Medicaid patient days at the prevailing Medicaid Level II ceiling rate for the first year of operation. This first year rate shall be subject to cost settlement based upon cost report data. For the second and third years of the pilot program, the facility shall be reimbursed based upon Behavioral Unit expenditures reported in the facility's cost report. The Medicaid rate paid for Behavioral Unit patient days shall be subject to the Medicaid Level II ceiling rate.
- (b) During the three year pilot project, beds eligible for reimbursement are limited to 150 statewide and 50 per grand region. At the inception of the pilot program, the number of eligible beds shall be determined for each participating facility. The number of beds shall be determined based upon the Medicaid eligible beds in each participating facility's state approved Alzheimer's Unit as of July 1, 2002.

At that time, an adjustment shall be made to reduce any beds in excess of 150 statewide and 50 per grand region. For grand regions having more than one qualifying facility, the number of beds allotted to each facility for the Behavioral Unit pilot project shall be determined by taking the number of beds in each facility's state approved Alzheimer's Unit and dividing that number by the total number of qualifying beds in the grand region. The 50 beds available for the region shall then be allocated based on the resulting percentage for each facility.

Authority: T.C.A. §§4-5-208, 12-4-301, 71-5-105, 71-5-109, Executive Order 23.

Rule 1200-13-1-.10 Criteria for Medicaid Reimbursement of Care in Nursing Facilities is amended by adding a new paragraph (6) and renumbering the present paragraph (6) as (7) so as amended the new paragraph (6) shall read as follows:

(6) Criteria for Medicaid Reimbursement of Behavioral Unit pilot program level of care in a Nursing Facility

- (a) The individual must be determined by the Tennessee Department of Human Services to be financially eligible for Medicaid reimbursement for Nursing Facility Care.
- (b) An individual must meet both of the following criteria in order to be approved for Medicaid-reimbursed Behavioral Unit pilot program level of care in a Nursing Facility:
 - 1. **MEDICAL NECESSITY OF CARE:** Care in a Nursing Facility must be expected to improve or ameliorate the individual's physical or mental condition, to prevent a deterioration in health status, or to delay progression of a disease or disability, and such care must be ordered and supervised by a physician on an ongoing basis.
 - 2. **NEED FOR INPATIENT NURSING CARE:** The individual must have a mental condition, disability, or impairment that requires daily nursing care. The individual must require Behavioral Unit pilot program services, which, in accordance with accepted medical practice, are not usually and customarily self-performed.

To qualify for Behavioral Unit services the patient shall require therapeutic interventions such as supervision, interaction, monitoring, prompting, cueing, modeling, and redirecting at least daily for behav-

iors that include, but are not limited to, the following:

- (i) History and/or attempts to harm self or others, such as kicking, biting, scratching, hitting, or pinching.
- (ii) Aggressive behaviors and mannerisms.
- (iii) Increased motor activity with agitation.
- (iv) Suicidal tendencies.
- (v) High elopement risk (normal safety precautions with door locks not enough).
- (vi) Perpetual disruptive behavior (hits, bangs objects continuously).
- (vii) Public disrobing, sexual inappropriateness, public defecation/urination.
- (viii) Unpredictable episodes of explosive anger or aggression.

2. **BEHAVIORAL UNIT PATIENT CLASSIFICATION:** Patients qualifying for admission to the Behavioral Unit pilot program shall be classified in the following Resource and Utilization Group (RUGs) categories: BA1; BA2; BB1; BB2; CA2; CB1; CB2; CC1; CC2; IA1; and IB2. Patients classified in the above categories have behavioral problems, are clinically complex, or have impaired cognition.

(a) Eligible facilities shall meet the following criteria:

1. Behavioral Unit pilot program facilities shall be located in each of the three grand divisions of the state of Tennessee as defined by the Department of Health's Division of Health Care Facilities.
2. For calendar year 2001, Medicaid patient days in each eligible facility's state approved Alzheimer's Unit shall constitute 75% or more of the total patient days billed for the state approved Alzheimer's Unit.
3. Eligible facilities shall have a minimum of 50 licensed beds in their Behavioral Unit. Should a grand region have no qualifying facility due to the minimum licensed beds requirement, this provision shall be waived for that region.
4. Each facility shall have operated a state approved Alzheimer's Unit for the past five years.
5. No facility shall be eligible for the Behavioral Unit pilot program if its special Alzheimer's unit received a "J" level or higher survey citation within the past three years. (A "J, K or L" level citation is based on federal regulations and indicates Immediate Jeopardy, defined as a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.).
6. Eligibility for the Behavioral Unit program shall include only those facilities meeting all stated requirements as of July 1, 2002.
7. Eligible facilities may choose to decline participation in the Behavioral Unit pilot program. Facilities opting to be excluded from the program shall contact the Commissioner of the Department of Health in writing no later than thirty days after notification of eligibility.

Authority: *T.C.A. 4-5-208, 12-4-301, 71-5-105, 71-5-109, Executive Order 23.*

The emergency rules set out herein were properly filed in the Department of State on the 5th day of July, 2002, and will be effective from the date of filing for a period of 165 days. The Emergency rules will remain in effect through the 17th day of December, 2002. (07-05)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

- 0400 - Department of Environment and Conservation - Division of Radiological Health - Public Necessity rules dealing with regulation of radioactive materials under the terms of an agreement between Tennessee and the U.S. Nuclear Regulatory Commission (NRC), chapters 1200-2-4, 5, 7, 8, 10, and 12, 5 T.A.R. (May 2002) - Filed April 18, 2002; effective through September 30, 2002. (04-18)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting proposed amendments to the rules of Tennessee Department of Finance and Administration, Bureau of TennCare for promulgation under the provisions of the Uniform Administrative Procedures Act and Tennessee Code Annotated 71-5-134.

The State of Tennessee has received federal approval for a new modified TennCare Demonstration Project under Section 1115 of the Social Security Act from July 1, 2002 through June 30, 2007. The modified TennCare program is a managed care program for both the Medicaid population and the expansion population. As of July 1, 2002 there is not just one TennCare program. There are two TennCare Medicaid and TennCare Standard. Everyone who gets TennCare will be in one of the programs.

TennCare Medicaid will be available to all Tennessee residents who meet Medicaid requirements, including those individuals who are dually eligible for Medicaid and Medicare. These determinations continue to be made in accordance with the 1993 Medicaid State Plan. Medicaid eligibles, by federal definition, can have access to other insurance and still be eligible for the program.

In addition, the state will extend Medicaid eligibility to uninsured women under the age of 65 who have been determined to have breast or cervical cancer, including precancerous conditions, through the Centers for Disease Control screening process. Eligibility for this group will begin with presumptive eligibility and last until the course of treatment has ended.

Pursuant to Public Chapter 358, to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to this act the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0145.

Manny Martins
Deputy Commissioner
Tennessee Department of Finance and
Administration

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

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

**SUMMARY
OF
PROPOSED RULES**

Rules of the Tennessee Department of Finance and Administration is amended by adding Chapter 1200-13-13 TennCare Medicaid.

Eligibility

The Technical and financial eligibility requirement for TennCare Medicaid are as follows:

- (a) To be eligible for TennCare Medicaid, individuals must:
 - 1. Meet all technical requirements applicable to the appropriate category of medical assistance as described in Chapter 1240-3-3-.03 of the rules of the TDHS – Division of Medical Assistance, and all financial eligibility requirements applicable to the appropriate category of medical assistance as described in Chapter 1240-3-3-.03 of the rules of the TDHS – Division of Medical Assistance; or
 - 2. Meet the financial eligibility requirements of the SSI Program of the Social Security Administration and be approved for SSI benefits by the Social Security Administration; or
 - 3. Be a woman who is under age sixty-five (65), is uninsured, is not eligible for Medicaid under any other category, is a U.S. citizen or qualified alien, and has been diagnosed by a screening at a Centers for Disease Control and Prevention (CDCP) site with breast or cervical cancer, including pre-cancerous conditions.

- (b) The Bureau of TennCare will also have access to third party resources on current TennCare Medicaid eligibles. MCCs will release insurance information from their files to the Bureau of TennCare on a regular basis, as required in the contract between the MCCs and the Tennessee Department of Finance and Administration.
- (c) Eligibility for TennCare Medicaid is limited to individuals who meet the following criteria:
 - 1. Tennessee residents who are eligible for Medicaid as defined in rule 1200-3-3 of the TDHS – Division of Medical Assistance;
 - (i) Individuals enrolled as categorically needy, as defined at 1200-13-13-.01 of these rules, will be eligible for TennCare Medicaid for a period determined by their eligibility category.
 - (ii) Individuals enrolled as medically needy, as defined at 1200-13-13-.01 of these rules, will be eligible for a period of one (1) year regardless of his/her Medicaid eligibility period.
 - (iii) TennCare Medicaid enrollees in Parts 1. And 2. above, must be recertified for TennCare Medicaid prior to the expiration of their eligibility and qualify to remain in TennCare Medicaid, or apply for and be approved for TennCare Standard in order to maintain their benefits in the TennCare Program without a break in coverage.
 - 2. Tennessee residents who are determined eligible for the SSI Program by the Social Security Administration.
 - 3. Women who have been enrolled as a result of needing treatment for breast or cervical cancer and who meet the technical and financial requirements found at 1200-13-13-.02 of these rules will be enrolled for a period of one (1) year. Prior to the expiration of that year, she will be asked to recertify her, and her family's if appropriate, address, monthly income, and access to health insurance in order to continue to participate in the TennCare Medicaid Program.
- (d) Effective date of eligibility
 - 1. For SSI eligibles, the date determined by the Social Security Administration in approving the individual for SSI coverage.
 - 2. For all other Medicaid eligibles, the date of the application or the date of the qualifying event (such as the date that a spend-down obligation is met), whichever is later.
 - 3. For persons applying for Medicaid eligibility during a period when the DHS offices are not open, the date their faxed application is received at DHS, but only when the faxed application is followed up on the next business day with a complete application at DHS.

Enrollment

Persons determined eligible for TennCare Medicaid by the TDHS or the Social Security Administration, as eligible for SSI benefits, are subject to the following requirements:

- (a) Individuals who are approved for TennCare Medicaid by the TDHS or the Social Security Administration (for SSI benefits) shall be allowed to enroll in TennCare Medicaid at any time throughout the year.

- (b) TennCare Medicaid enrollees will have a forty-five (45) day period after initially selecting or being assigned to a health plan to change plans. No additional changes will be allowed except as otherwise specified in these rules.
- (c) If an individual is approved for TennCare Medicaid and has another family member already enrolled in the TennCare Program, that individual shall be placed in the same health plan as the currently enrolled family member. To the extent possible, all identifiable family members shall be placed in the same health plan. The exception will be any family members assigned to TennCare Select by the Bureau of TennCare. If the newly enrolled family member opts to change MCOs during the 45-day change period as stated in (b) above, all family members on the case will be transferred to the new MCO.
- (d) Enrollees in TennCare Medicaid shall be given their choice of health plans when possible. If no MCO is available to enroll new members in the enrollee's region, the enrollee will be assigned to TennCare Select until such time as another MCO becomes available. The Bureau may also elect to assign certain TennCare Medicaid children with special health needs to TennCare Select. Once the 45-day change period, as stated in (b) above expires, an individual shall remain a member of the designated plan until:
 - 1. Recertification if he/she is TDHS-eligible for TennCare Medicaid. During the recertification process, the enrollee will be given the opportunity to change health plans if he/she chooses to do so. Enrollees who must recertify TennCare Medicaid eligibility more often than annually will only be allowed to change health plans one (1) time per twelve (12) months, except as otherwise provided for in these rules; or
 - 2. He/she, if eligible for TennCare Medicaid as a result of being eligible for SSI benefits, is given the opportunity to change health plans annually during a period specified by the Bureau of TennCare; or
 - 3. He/she loses eligibility to participate in the TennCare Program, whichever comes first.

However, enrollees, after going through the appeal process as described in (4)(b) below, and obtaining the approval of the Bureau of TennCare, may be permitted to change enrollment to a different health plan. In the event that an enrollee elects to change health plans, the enrollee's medical care will be the responsibility of the original health plan until enrollment in the subsequent health plan is deemed complete.

- (e) All changes in health plan assignments are subject to the requested health plan's ability and capacity to accept additional enrollees. If the requested health plan cannot accept additional enrollees, the enrollee will be assigned to another health plan, or remain in the same health plan of which he/she is a current member.
- (f) TennCare Medicaid enrollees shall be enrolled in a BHO for their mental health and substance abuse services.
- (g) TennCare Medicaid enrollees shall be accepted by an MCO regardless of their health condition at the time of enrollment.
- (h) Individuals or families determined eligible for TennCare Medicaid shall select a health plan at the time of application. Individuals enrolled as a result of being eligible for SSI benefits will be assigned to a health plan as they do not have the opportunity to select a health plan prior to their effective date of coverage. All TennCare Medicaid enrollees have a forty-five (45) day period, effective with the effective date of coverage, to request a change of health plans.

- (i) Enrollment shall be effective on the date provided to the Bureau of TennCare by the TDHS or the Social Security Administration, in accordance with these rules, and the eligible person has selected or been assigned to a health plan from those available where the person resides. In the event that an individual fails to select a health plan or the requested health plan is unable to accept additional enrollees, he/she shall be assigned to a health plan by the Bureau of TennCare.
- (j) MCOs shall offer enrollees to the extent possible, freedom of choice among providers participating in their respective health plans. If after notification of enrollment the enrollee has not chosen a primary care provider, one may be chosen for him/her by the MCO. The period during which an enrollee may choose his/her primary care provider shall not be less than fifteen (15) calendar days.

~~TennCare Medicaid enrollees are given their choice of health plans when possible. Once enrolled, the enrollees remain a member of the designated health plan until he/she is given an opportunity to change during an annual recertification period, or during a Bureau of TennCare specific time for those who are SSI-eligible to participate in TennCare Medicaid. Only one (1) change is permitted every twelve (12) months, except where otherwise provided for in these rules.~~

Benefits

Benefits for TennCare Medicaid will not change until January 1, 2003. Benefits currently consist of enumerated covered medical services to be provided as medically necessary, including hospital, physician and pharmacy services as well as EPSDT (Early and Periodic Screening, Diagnosis and Treatment) services for children. The benefits package will be modified effective January 1, 2003, to provide limitations on some services and to require copayments for pharmacy services.

The Public Necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2002, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 13th day of December, 2002. (07-02)

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

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting proposed amendments to the rules of Tennessee Department of Finance and Administration, Bureau of TennCare for promulgation under the provisions of the Uniform Administrative Procedures Act and Tennessee Code Annotated 71-5-134.

The State of Tennessee has received federal approval for a new modified TennCare Demonstration Project under Section 1115 of the Social Security Act from July 1, 2002 through June 30, 2007. The modified TennCare program is a managed care program for both the Medicaid population and the expansion population. As of July 1, 2002 there is not just one TennCare program. There are two TennCare Medicaid and TennCare Standard. Everyone who gets TennCare will be in one of the programs.

TennCare Standard will be offered to two groups of Tennessee residents who do not have access to group health insurance.

- Those who have incomes below 200 percent poverty; and
- Those who are “medically eligible” at any income level.

In addition, a third group will have access to pharmacy benefits only under TennCare Standard. This group will be persons enrolled in TennCare as of December 31, 2001, who have Medicare but not Medicaid, and who continue to meet the criteria for “uninsurability”.

A fourth group, will be children under 19 with family incomes below 200% poverty and access to insurance who were enrolled in TennCare as of December 31, 2001. At such time as these children reach their 19th birthday and/or their family income exceeds 200% poverty, they will have to be eligible in another category in order to remain on TennCare. They will have premium and copay obligations if their family income exceeds 100% poverty.

Pursuant to Public Chapter 358, to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to this act the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 729 Church Street, Nashville, Tennessee 37247-6501 or by telephone at (615) 741-0145.

Manny Martins
Deputy Commissioner
Tennessee Department of Finance and
Administration

**SUMMARY
OF
PUBLIC NECESSITY RULES
OF**

THE TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION

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

TennCare Standard is the new TennCare category for the waiver eligible population.

TennCare Standard will be offered to two groups of Tennessee residents who do not have access to group health insurance.

- Those who have incomes below 200 percent poverty; and
- Those who are “medically eligible” at any income level.

In addition, a third group will have access to pharmacy benefits only under TennCare Standard. This group will be persons enrolled in TennCare as of December 31, 2001, who have Medicare but not Medicaid, and who continue to meet the criteria for “uninsurability”

A fourth group, will be children under 19 with family incomes below 200% poverty and access to insurance who were enrolled in TennCare as of December 31, 2001. At such time as these children reach their 19th birthday and/or their family income exceeds 200% poverty, they will have to be eligible in another category in order to remain on TennCare. They will have premium and copay obligations if their family income exceeds 100% poverty.

Eligibility for TennCare Standard is limited to individuals who are not eligible for Medicaid and meet the following criteria:

- (a) Are Tennessee residents who are medically eligible and have income below one hundred (100%) percent of the poverty level;
- (b) Tennessee residents who were enrolled on the program as of June 30, 2002 as uninsured or uninsurable and who have incomes at or below the poverty level established annually based on appropriations made available by the State Legislature or have income above that level but have proven they are medically eligible in accordance with the procedures specified in these rules so long as they continue to be uninsured and lack access to group health insurance. The only exception other than that described in paragraph (d) is for uninsured children under two hundred (200%) percent of poverty who were enrolled on the program as of June 30, 2002 and have remained continuously enrolled in the program, even if they have access to group health insurance. These enrollees must report changes in income, family size and compensation, and employment and employment status to their county TDHS office in writing within the time frame established at T.C.A. 71-5-110 for reporting changes so that a determination can be made as to access to (or lack of) employer-sponsored health insurance and the appropriate level of premium to be assessed, if any.
- (c) Tennessee residents, who were eligible for Medicare on December 31, 2001, enrolled in TennCare as an uninsured as of December 31, 2001 and who do not qualify for Medicaid, subject to proving to the Bureau that they are uninsurable. These enrollees must complete a redetermination process at the TDHS office in the county where they reside. This includes, but is not limited to, a review of access to other health insurance, (except Medicare) address, change in income, and any change in family size and composition. Enrollees who have access to other health insurance will lose their eligibility for TennCare Standard. At that time they will also be required to prove they are uninsurable the enrollee must provide a denial letter from an insurance

company or its authorized agent, for which the denial is based upon the applicant's health status. TennCare will send a notice to non-Medicaid individuals who had Medicare and TennCare as an uninsured as of December 31, 2001, telling them that they must submit a letter of declination for a Medicare supplemental policy. The failure to provide proof of uninsurability will result in disenrollment from TennCare and the enrollee will no longer be eligible to apply for TennCare Standard.

- (d) Tennessee residents, who were eligible for Medicare, enrolled in TennCare as an uninsurable as of December 31, 2001, and who do not qualify for Medicaid. These enrollees must complete a redetermination process at the TDHS office in the county where they reside. This includes, but is not limited to, a review of access to other health insurance, (except Medicare) address, change in income, and any change in family size and composition. Enrollees who have access to other health insurance will lose their eligibility for TennCare Standard. However, this population will not be required to re-prove their uninsurable status.
 - 1. "Other health insurance" for the categories of eligibles described in subparagraphs (d) and (e) of this paragraph includes the following:
 - (i) A group health plan as defined in these rules;
 - (ii) Health insurance coverage, meaning benefits consisting of medical care (provided directly through insurance or reimbursement or otherwise, and including items and services paid for as medical care) under any hospital or medical services policy or certificate, hospital or medical services plan contract, or health maintenance contract offered by a health insurance issuer;
 - (iii) Medicaid;
 - (iv) Armed forces health insurance (TRICARE);
 - (v) A state health risk pool.

(e) Enrollment:

Enrollment for TennCare Standard will shift to the Department of Human Services from the Department of Health. SSI beneficiaries through the Social Security Administration will be enrolled TennCare Medicaid benefits, while the SPMI/SED population, unless also eligible for Medicaid, will be enrolled in TennCare Standard. The Department of Mental Health and Developmental Disabilities will be the lead agency for establishing policy and procedural requirements and criteria for TennCare eligibility. Please also refer to the Summary of TennCare Standard above for general and technical eligibility requirements.

Enrollment for TennCare Standard ceases when:

- (a) The enrollee becomes eligible for participation in an employer-sponsored group health insurance plan;
- (b) The enrollee becomes eligible for Medicare;
- (c) The enrollee is determined eligible for Medicaid;
- (d) The enrollee becomes eligible for TRICARE;
- (e) The enrollee purchases an individually-funded, non-employer-sponsored health insurance plan;

- (f) It is determined that the enrollee falsified the information given at the time of application for TennCare Standard and approval was based on this false information;
- (g) The enrollee fails to pay the required premium in order to enroll and/or remain enrolled in TennCare Standard;
- (h) The enrollee has failed to pay applicable co-payments for services received and the Bureau has authorized disenrollment;
- (i) It is determined that an enrollee has abused the TennCare Program by allowing an ineligible person to utilize the enrollee's TennCare Standard identification card to obtain services, subject to federal and state laws and regulations;
- (j) The individual fails to comply with TennCare Program requirements, subject to federal and state laws and regulations;
- (k) It is determined that the enrollee has abused the TennCare Program by using their TennCare Standard identification card to seek or obtain drugs or supplies illegally or for resale, subject to federal and state laws and regulations;
- (l) Death of the enrollee;
- (m) It is determined that any of the technical eligibility requirements are no longer met;
- (n) The enrollee has failed to respond to a recertification process requirement, to assure that the enrollee and other family members, as appropriate, remains eligible for TennCare Standard;
- (o) When the TDHS county office receives a voluntary written request for termination of eligibility
- (p) Benefits for TennCare Standard will not change until January 1, 2003. Currently, the benefits consist of enumerated covered medical services to be provided as medically necessary, including hospital, physician and pharmacy services as well as EPSDT (Early and Periodic Screening, Diagnosis and Treatment) services for children. The benefits package will be modified effective January 1, 2003, to provide limitations on some services and to require copayments for some services, including pharmacy, based upon an income sliding scale. EPSDT will not be a covered benefit as of January 1, 2003.
- (q) Appeals of adverse actions for persons on TennCare Standard.
 - 1. For persons on TennCare Standard who have been denied services, the appeals process will follow the Grier v. Wadley appeals process which has been in effect for the past two years. Enrollees may appeal any denial, delay, termination, suspension, reduction of TennCare benefits or any other act or omission by the TennCare program which impairs the quality, timeliness, or availability of such benefits.
 - 2. An enrollee must be given notice of an adverse action and has the right to appeal. The enrollee has 30 days to file an appeal and the enrollee has a right to a decision on his/her appeal within 90 days for a regular appeal and 31 days for an expedited.
 - 3. The appeal may be filed by telephone, fax, in person or in writing. If the enrollee needs assistance in filing an appeal, TennCare will assist him/her. The MCC has 14 days or 5 in the case of an expedited appeal to reconsider its original decision.

4. For pharmacy services, if the enrollee is denied a medication at the pharmacy, he/she must be given a notice of the denial and receive a fourteen day supply of the medication, unless the medication is non-covered, medically contraindicated, or the prescription is for less than 14 days.
5. If the TennCare Solutions Unit does not resolve the appeal, the appeal is sent to an Administrative Judge for a fair hearing. The enrollee may represent himself or have a friend or an attorney assist him with the hearing. The enrollee will be sent a Notice of Hearing telling him what the hearing is about and that he may have a hearing in person or on the telephone. The Notice will inform him of his rights at the hearing and the time and place, if appropriate.

The Public Necessity rules set out herein were properly filed in the Department of State on the 1st day of July, 2002, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 15th day of December, 2002. (07-01)

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

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Tennessee Code Annotated, Section 71-3-155(e) requires that the standard of need for recipients of temporary assistance in the Families First program for the fiscal year be set by rule of the Tennessee Department of Human Services on July 1 of each year. T.C.A. Section 71-3-155(f) further requires that the maximum grants be set, as a percentage of the standard of need, in the annual Appropriations Act or in rule of the Department. The annual appropriations act for Fiscal Year 2003 has not, as of the filing of these rules, occurred. However, the General Assembly has passed Senate Bill 3256/House Bill 3301(2002), the "Essential Government Services Act of 2002" to provide for the continuation of essential services by certain agencies for certain programs. The Act was signed by the Governor on June 30, 2002. Section 3 of that Act provides a sum sufficient, effective July 1, 2002, to fund certain essential programs. Subsection (f) of Section 3 states that such funding is appropriated to "The department of human services to the extent its commissioner deems it necessary to provide family assistance services, including the families first program and food stamp programs."

These rules implement the level of grant payments to families in the Families First Program effective July 1, 2002 and establish the Standard of Need for those families in the Families First Program. I declare that the implementation of this rule, the standard of need and grant payment amounts established by these rules are necessary to properly provide certain Families First services to the Department's family assistance recipients.

Additionally, because the amount of funding available for grants and the new standard of need is not known until the passage of the annual Appropriations Act, which did not occur before the beginning of Fiscal Year 2003, and because the law requires that the standard of need and grant amounts be set by rule to be effective on July 1 of the fiscal year, and because the "Essential Government Services Act of 2002" was not enacted until June 30, 2002, it is not possible to establish these rules by regular rulemaking procedures.

For a complete copy of these public necessity rules, contact: William Russell, General Counsel, Tennessee Department of Human Services, Citizens Plaza Building, 15th Floor, 400 Deaderick Street, Nashville, TN 37248, telephone number (615) 313-4731.

Natasha K. Metcalf
Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

AMENDMENTS

Rule 1240-1-50-.20 Standard Of Need/Income. is amended, effective July 1, 2002, by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-1-50-.20 STANDARD OF NEED/INCOME. The following table shows, effective July 1, 2002, the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.

- (1) Families First Standards
 - (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
 - (b) Gross Income Standard (GIS). This standard is set by federal law at 185% of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the AG is not eligible for Families First.
 - (c) Standard Payment Amount (SPA). Tennessee does not meet 100% of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on funds available, is paid, except in the instances specified in subparagraph (e) below.
 - (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of

the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.

(e) Family Benefit Cap

1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by Public Chapter 950 (1996), unless
 - (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First;
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home; or
 - (VI) when a Families First case is closed, through a deliberate action, without good cause, and the family reapplies within ninety (90) days.
2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt for an eighteen (18) month eligibility period during which the child was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.

(f) An assistance payment is determined as follows:

1. If the assistance group's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
2. If the assistance group's net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if

it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.

In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.

3. The minimum monthly grant which can be paid is ten dollars (\$10).

(g) Families First Need/Payment Standards

1. Tables

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	944	1338	1589	1658	2009	2020	2205	2226	2442	2459
Consolidated Need Standard	510	723	859	896	1086	1092	1192	1203	1320	1329
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2538	2607	2668	2720	2764	2806	2842	2873	2899	2923
Consolidated Need Standard	1372	1409	1442	1470	1494	1517	1536	1553	1567	1580
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	944	1338	1589	1658	2009	2020	2205	2226	2442	2459
Consolidated Need Standard	510	723	859	896	1086	1092	1192	1203	1320	1329
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2538	2607	2668	2720	2764	2806	2842	2873	2899	2923
Consolidated Need Standard	1372	1409	1442	1470	1494	1517	1536	1553	1567	1580
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 21.5% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 27.0% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2001-2002.

Authority: T.C.A. §§ 4-5-201 *et seq.*; 4-5-209; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)-(g); Senate Bill 3256/House Bill 3301(2002); 42 USCA §§ 601 *et seq.*; 45 CFR 233.20; 42 USCA § 1315.

The public necessity rules set out herein were properly filed in the Department of State on the 3rd day of July, 2002 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 15th day of December, 2002. (07-03)

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

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Tennessee Code Annotated, Section 71-3-155(e) requires that the Standard of Need for recipients of temporary assistance in the Families First program for the fiscal year be set by rule of the Tennessee Department of Human Services on July 1 of each year. T.C.A. Section 71-3-155(f) further requires that the maximum grants be set, as a percentage of the Standard of Need, in the annual Appropriations Act or in rule of the Department.

The annual Appropriations Act for Fiscal Year 2003 (Senate Bill 2344/House Bill 2308) was not enacted by the General Assembly and approved by the Governor until July 3, 2002. Prior to that, the General Assembly passed Senate Bill 3256/House Bill 3301(2002), the "Essential Government Services Act of 2002", to provide for the continuation of essential services by certain agencies for certain programs. The Act (Public Chapter 827)(2002) was signed by the Governor on June 30, 2002, but the Act was only effective through July 5, 2002. Section 3 of that Act provided a sum sufficient, effective July 1, 2002, to fund certain essential programs. Subsection (f) of Section 3 states that such funding is appropriated to "The department of human services to the extent its commissioner deems it necessary to provide family assistance services, including the families first program and food stamp programs."

Public Necessity Rules, filed July 3, 2002, implemented the level of grant payments to families and established the Standard of Need for those families in the Families First Program effective July 1, 2002 based upon the authority of Public Chapter 827. The Department previously declared in the Statement of Necessity filed with the Public Necessity Rules filed on July 3, 2002 that the implementation of the rules to establish the Standard of Need and grant payment amounts was necessary to properly provide certain Families First services to the Department's family assistance recipients as of July 1, 2002.

These Public Necessity Rules, based upon the passage of the Appropriations Act (Senate Bill 2344/House Bill 2308)(2002) which became effective after the previous set of Public Necessity Rules were filed on July 3, 2002, will replace those Public Necessity Rules filed on July 3, 2002 which were based upon law which has a period of effectiveness ending July 5, 2002.

Additionally, because the amount of funding available for grants and the new Standard of Need is not known until the passage of the annual Appropriations Act, which did not occur until July 3, 2002, and because the law requires that the Standard of Need and grant amounts be set by rule to be effective on July 1 of the fiscal year, and because the annual Appropriations Act was not enacted until July 3, 2002, it is not possible to establish these rules by regular rulemaking procedures.

For a complete copy of these public necessity rules, contact: William Russell, General Counsel, Tennessee Department of Human Services, Citizens Plaza Building, 15th Floor, 400 Deaderick Street, Nashville, TN 37248, telephone number (615) 313-4731.

Michael Dedmon, Deputy Commissioner
Tennessee Department of Human Services

**PUBLIC NECESSITY RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-1-50
STANDARD OF NEED/INCOME**

AMENDMENTS

Rule 1240-1-50-.20 is amended, effective July 6, 2002, by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-1-50-.20 Standard Of Need/Income. The following table shows, effective July 6, 2002, the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.

(1) Families First Standards

- (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).
- (b) Gross Income Standard (GIS). This standard is set by federal law at 185% of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the AG is not eligible for Families First.
- (c) Standard Payment Amount (SPA). Tennessee does not meet 100% of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on funds available, is paid, except in the instances specified in subparagraph (e) below.
- (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.
- (e) Family Benefit Cap
 - 1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by Public Chapter 950 (1996), unless

- (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First;
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home; or
 - (VI) when a Families First case is closed, through a deliberate action, without good cause, and the family reapplies within ninety (90) days.
2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
 3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt for an eighteen (18) month eligibility period during which the child was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.
- (f) An assistance payment is determined as follows:
1. If the assistance group's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
 2. If the assistance group's net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.
- In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.
3. The minimum monthly grant which can be paid is ten dollars (\$10).

(g) Families First Need/Payment Standards

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
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Consolidated Need Standard	510	723	859	896	1086	1092	1192	1203	1320	1329
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per Month for any Assistance Group

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Minimum Families First Payment is \$10 per Month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2538	2607	2668	2720	2764	2806	2842	2873	2899	2923
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Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per Month for any Assistance Group

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 21.5% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 27.0% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2001-2002.

Authority: TCA §§ 4-5-201 *et seq.*; 4-5-209; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)-(g); Acts, 2002, ch. 827, Section 3(f); Senate Bill 2344/House Bill 2308(2002), Section 10, Item 22; 42 USCA §§ 601 *et seq.*; 45 CFR 233.20; 42 USCA § 1315.

The public necessity rules set out herein were properly filed in the Department of State on the 8th day of July, 2002 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 20th day of December, 2002. (07-06)

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RULEMAKING HEARINGS

THE TENNESSEE BOARD OF BARBER EXAMINERS - 0200

There will be a hearing before the Tennessee Board of Barber Examiners to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann. § 62-3-128(a). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway, Nashville, Tennessee, at 9:00 A.M. CDT on the 23rd day of September, 2002.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date of September 23, 2002, to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 and (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: The Tennessee Board of Barber Examiners, Attention: Evelyn Griffin, Tennessee Board of Barber Examiners, 500 James Robertson Parkway, Davy Crockett Tower, 1st Floor, Nashville, Tennessee 37243, (615) 741-2515.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0200-1

RULES OF BARBER BOARD

AMENDMENTS

Subparagraph (d) of paragraph (1) of rule 0200-1-.07 Equipment and Location Requirements for Barber Shops is amended by deleting the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (d) shall read as follows:

- (d) One (1) dry sterilizer or sanitary compartment, with fumigant per station;

Authority: *T.C.A. §62-3-128(a).*

Subparagraph (g) of paragraph (1) of rule 0200-1-.07 Equipment and Location Requirements for Barber Shops is amended by deleting the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (g) shall read as follows:

- (g) Adequate restroom facilities;

Authority: *T.C.A. §62-3-128(a).*

Subparagraph (h) of paragraph (1) of rule 0200-1-.07 Equipment and Location Requirements for Barber Shops is amended by deleting the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (h) shall read as follows:

- (h) One (1) wet sterilizing solution container per barber chair; and

Authority: *T.C.A. §62-3-128(a).*

Paragraph (1) of rule 0200-1-.07 Equipment and Location Requirements for Barber Shops is amended by adding a new subparagraph (i) immediately following subparagraph (h), which shall read as follows:

- (i) One (1) ultra violet sanitizer.

Authority: *T.C.A. §62-3-128(a).*

Rule 0200-1-.11 Fees is amended by deleting the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read as follows:

0200-1-.11 FEES.

- (1) The Board shall charge and collect the following fees and penalties:

(a) Master Barbers

1. Examination..... set by contract
2. Certificate of registration..... seventy-five dollars (\$75.00)
3. Renewal..... eighty dollars (\$80.00)
4. Change of name..... ten dollars (\$10.00)
5. Late renewal penalty fee if a certificate has been expired three (3) years or less..... twenty-five dollars (\$25.00)
6. For reinstatement of a certificate of registration over three (3) years after its expiration, a new application for examination shall be submitted. If successful, the applicant shall pay the specified license fee. The examination shall consist of a practical and law examination. Such applicant shall not be required to meet the qualifications for a certificate of registration established in Tenn. Code Ann. § 62-3-110(b)(1)(B), (C) and (D).

(b) Technicians

1. Examination..... set by contract
2. Certificate of registration..... seventy-five dollars (\$75.00)
3. Renewal..... eighty dollars (\$80.00)
4. Late renewal penalty fee if certificate has been expired one (1) year or less..... twenty-five dollars (\$25.00)

5. For reinstatement of a certificate of registration over one (1) year after its expiration, a new examination application shall be submitted. If successful, the applicant shall pay the specified license fee. The examination shall consist of a practical and law examination. Such applicant shall not be required to meet the qualifications for a certificate of registration established in Tenn. Code Ann. § 62-3-110(a)(1).

6. Change of name..... ten dollars (\$10.00)

(c) Barber Schools or Colleges

1. Certificate of registration..... six hundred dollars (\$600.00)
2. Renewal..... three hundred fifty dollars (\$350.00)
3. Late renewal penalty fee if certificate has been expired one (1) year or less..... twenty-five dollars (\$25.00)
4. Change of ownership and/or location.... three hundred fifty dollars (\$350.00)
5. Change of name.....ten dollars (\$10.00)

(d) Barber Instructors

1. Examination..... set by contract
2. Certificate of registration..... eighty-five dollars (\$85.00)
3. Renewal.....ninety dollars (\$90.00)
4. Late renewal penalty fee if certificate has been expired three (3) years or less.....twenty-five dollars (\$25.00)
5. Change of name..... ten dollars (\$10.00)
7. For reinstatement of a certificate of registration over three (3) years after its expiration, a new application for examination shall be submitted. If successful, the applicant shall pay the specified license fee. The examination shall consist of a practical and law examination. Such applicant shall not be required to meet the qualifications for a certificate of registration established in Tenn. Code Ann. § 63-3-124(a)(6).

(e) Barber Shops

1. To register a new barber shop for change of ownership and/or location, the following fees are required:
 - (i) Inspection..... fifty dollars (\$50.00)
 - (ii) Certificate of registration..... one hundred dollars (\$100.00)
2. Renewal..... one hundred dollars (\$100.00)
3. Change of name..... ten dollars (\$10.00)

4. Late renewal penalty fee if certificate has been expired one (1) year or less..... twenty-five dollars (\$25.00)
- (f) Certifications to other Jurisdictions
 1. License certification..... fifty dollars (\$50.00)
 2. Student certification of hours.....fifty dollars (\$50.00)
- (g) Barber instructor assistant certificate of registration... twenty-five dollars (\$25.00)
- (h) Reciprocity..... one hundred fifty dollars (\$150.00)
- (i) In the event that any check, draft or money order for the payment of a fee to the Board of Barber Examiners is returned because of insufficient funds, only cash, certified checks or money orders will be accepted for the amount due, plus a penalty fee of twenty dollars (\$20.00).
- (j) Change of ownership in a barber school or shop due to the death of an immediate family member..... no charge. Application must be accompanied by death certificate or notice.
- (k) Replacement or correction of license..... ten dollars (\$10.00)

Authority: T.C.A. §§62-3-113, 62-3-128 and 62-3-129.

Subparagraph (a) of paragraph (2) of rule 0200-1-.14 Teacher Training Programs is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language, so that, as amended, subparagraph (a) shall read as follows:

- (a) contain at least sixteen (16) hours of actual instruction;

Authority: T.C.A. §62-3-128(a).

CHAPTER 0200-3 SANITARY REQUIREMENTS

AMENDMENTS

Rule 0200-3-.01 Applicability is amended by adding the following language as a new paragraph (2) immediately following paragraph (1):

- (2) Prohibited Hazardous Substances/Use of Products.
No establishment or school shall have on the premises cosmetic products containing hazardous substances which have been banned by the United States Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate. No product shall be used in a manner that is inconsistent with the cosmetic product's manufacturer's instructions.

Authority: T.C.A. §62-3-128(a).

Rule 0200-3-.05 Commencement of Work is amended by deleting the text of the rule in its entirety and substituting instead the following language, so that, as amended, the rule shall read as follows:

0200-3-.05 SANITATION AND DISINFECTION.

- (1) No licensee or student shall commence work on any patron before:
 - (a) washing hands with soap and water; and
 - (b) placing around the patron's neck a fresh and sanitary neck strip or towel, so that the cape does not contact the skin.
- (2) Wet Disinfection Standard.
 - (a) All tools and implements which come into contact with the face, neck, feet or hands must be treated after each use by washing thoroughly with soap and water and must be disinfected by complete immersion in a United States Environmental Protection Agency (EPA) registered bactericidal, virucidal, fungicidal and pseudomonacidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions.
- (3) Dry Disinfection Standard.
 - (a) All tools and implements which have come in contact with blood or body fluids must be disinfected, at a minimum, by complete immersion in an EPA registered disinfectant that is effective against HIV-1 and human hepatitis B virus or in a tuberculocidal that is mixed according to the manufacturer's directions.
 - (b) Disinfected implements must be stored in a disinfected, dry, covered container.
- (4) A manicurist shall maintain a supply of seventy percent (70%) alcohol to be used in the event that a patron's skin is accidentally broken during the manicuring process.
- (5) Before use, manicuring instruments must be cleaned with soap and water, and immersed in seventy percent (70%) alcohol for at least ten (10) minutes. The alcohol for this purpose may be kept in a covered container of sufficient size to accommodate the instruments to be immersed.
- (6) When not in use, manicuring instruments must be dried and kept in a cabinet sanitizer.
- (7) The foot bath shall be cleaned and disinfected after each use. The filters and jets must be flushed, cleaned and disinfected twice a week with the use of a hospital grade tuberculocidal disinfectant or an equivalent solution circulated through the machine for the minimum time recommended by the manufacturer.
- (8) Towels.
 - (a) A separate, clean towel shall be provided for each patron, as required.
 - (b) The headrest shall be covered with a separate, clean towel or paper for each customer.
 - (c) The practice of dipping a towel previously used for any purpose into a container of hot water and using the towel on a patron is prohibited.
- (9) Combs.

- (a) Each operator shall have a sufficient number of combs to allow for proper sanitation.
 - (b) No operator shall carry combs or other instruments in the pocket of his/her uniform.
- (10) Powders, Lotions and Creams.
- (a) Powders and lotions must be applied with cotton or gauze puffs. Such puffs shall be disposed of in a waste receptacle immediately after use.
 - (b) Creams and other semi-solid substances must be removed from their container with a clean spatula (or similar device), and disposed of in a waste receptacle immediately after use. Any device used for the removal of such substances must not contact the skin of a patron.
- (11) After handling any patron with any eruption or skin disorder, the attendant shall immediately disinfect his/her hands by thoroughly washing with soap and water, followed by rinsing in alcohol (no less than seventy (70%) percent pure), or some suitable disinfectant.
- (12) Finger bowls, basins, shampoo boards, cups, etc. shall be thoroughly cleaned after each service, and kept in good repair and in a sanitary condition at all times. Back bars and mirrors shall be kept clean at all times.

Authority: T.C.A. §62-3-128(a).

CHAPTER 0200-3 SANITARY REQUIREMENTS

NEW RULES

TABLE OF CONTENTS

0200-3-.16 Skin Peeling

0200-3-.16 SKIN PEELING.

- (1) (a) Only the non-living, uppermost layers of facial skin, known as the epidermis may, by any method or means, be removed, and then only for the purpose of beautification.
- (b) Skin removal techniques and practices which affect the living layers of facial skin, known as the dermis, are prohibited and constitute the practice of medicine pursuant to Tenn. Code Ann. Title 63, Chapter 6, Part 2.
- (c) Only commercially-available products for the removal of facial skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except as it is required by the manufacturer's instructions.

Authority: T.C.A. §62-3-128(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-33)

THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE - 0780
DIVISION OF INSURANCE
AND
DIVISION OF TENNCARE OVERSIGHT

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of amendments of rules pursuant to T.C.A. §§56-32-218(a) and 71-5-191. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CDT on the 16th day of September, 2002.

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

For a copy of this notice of rulemaking hearing, contact: Julie W. Buhrman, Staff Attorney, Department of Commerce and Insurance, 25th Floor, Tennessee Tower, 312 Eighth Avenue North. Nashville, Tennessee 37243, telephone (615) 741-2199.

SUBSTANCE OF PROPOSED RULES

CHAPTER 0780-1-73
UNIFORM CLAIMS PROCESS FOR TENNCARE
PARTICIPATING MANAGED CARE ORGANIZATIONS

AMENDMENTS

Subparagraph (c) of paragraph 2 of rule 0780-1-73-.03 (Definitions) is amended by deleting subparagraph (c) in its entirety and adding the following language so that that as amended the subparagraph should read:

- (c) "CPT-4 Codes" ("Level I Codes") means the Physicians' Current Procedural Terminology, Fourth Edition, published by the American Medical Association.

Authority: T.C.A. §§56-32-218(a) and 71-5-191.

Paragraph 2 of rule 0780-1-73-.03 (Definitions) is amended by adding the following new subparagraph (g) after subparagraph (f):

- (g) "HCPCS Codes" ("Level II Codes") means the Health Care Financing Administration's Common Procedure Coding System. This means national codes developed by HCFA/CMS to supplement CPT codes. They include physical services not included in CPT as well as non-physician services such as ambulance, physical therapy and durable medical equipment. The acronym "HCPCS" stands for the HCFA/CMS Common Procedure Coding System.

Authority: T.C.A. §§56-32-218(a) and 71-5-191.

Paragraph (2) of rule 0780-1-73-.04 (Uniform Forms Required) is amended by adding the following new subparagraph (h) after subparagraph (g):

- (h) HCPCS Code Usage. For the purposes of these rules, providers are authorized to use the expiring or updated HCPCS codes on claims submitted during the period January 1 through March 31 of each year. From April 1 through December 31 of each year, however, providers must use the updated/current HCPCS codes.

Block 11 (Insured's Policy Group or FECA Number) of Appendix A of chapter 0780-1-73 is amended by deleting Block 11 in its entirety and substituting instead the following:

Block 11	Insured's Policy, Group or FECA Number	Enter the policy, group or FECA identification number of any insurer that is primary to TennCare. By completing this item, the physician or supplier acknowledges having made a good-faith effort to determine whether TennCare is the secondary payor. Do not leave this item blank. If there is no insurance primary to TennCare, enter the word "none" and proceed to Item 12. If there is insurance primary to TennCare, enter the insured's policy or group number and complete Item 11a. TennCare is always the payor of last resort. The TennCare group number will never belong here.
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Authority: T.C.A. §§56-32-218(a) and 71-5-191.

Block 22 (Medicaid (TennCare) Resubmission) of Appendix A of chapter 0780-1-73 is amended by deleting Block 22 in its entirety and substituting instead the following:

Block 22	Medicaid (TennCare) Resubmission	This item contains the acronym "CC" denoting that it is a "corrected claim". When billing Medicare, leave this item blank.
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Authority: T.C.A. §§56-32-218(a) and 71-5-191.

Block 24d (Procedures, Services, or Supplies) of Appendix A of chapter 0780-1-73 is amended by deleting Block 24d in its entirety and substituting instead the following:

Block 24d	Procedures, Services or Supplies	Enter the CPT code applicable to the services, procedures or supplies rendered. Include CPT modifiers when necessary. The codes and modifiers selected must be supported by medical documentation in the patient's record. Link each CPT code with the appropriate ICD-9-CM code listed in Items 21 and 24e. In the absence of an applicable CPT code, enter the HCPCS code applicable to the services, procedure or supplies rendered. The codes and modifiers selected must be supported by medical documentation in the patient's record. Link each HCPCS code with the appropriate ICD-9-CM code listed in Items 21 and 24e. Enter the specific procedure code without a descriptive narrative. If no specific procedure codes are available that fully describe the procedure performed, and an "unlisted" or "not otherwise classified" procedure code must be used, include the narrative description in Item 19.
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Authority: T.C.A. §§56-32-218(a) and 71-5-191.

Block 31 (Signature of Physician or Supplier) of Appendix A of chapter 0780-1-73 is amended by deleting Block 31 in its entirety and substituting instead the following:

Block 31	Signature of Physician or Supplier	Enter the signature of the physician or supplier, or a representative, and the date the claim form was signed in eight (8)-digit format. The provider or his or her authorized representative must sign the provider's name, or an approved facsimile stamp may be used. Type the provider's full name below the signature or stamp. Do not enter the name of an association or corporation in this field. (Computer generated/printed provider's name of "Signature on file" will also be accepted here.)
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Authority: T.C.A. §§56-32-218(a) and 71-5-191.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of July, 2002. (07-08)

**THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DIVISION OF RADIOLOGICAL HEALTH**

There will be a hearing before the Tennessee Department of Environment and Conservation, Division of Radiological Health, to consider the promulgation of amendments pursuant to T.C.A. 68-202-101 *et seq.*, and 68-202-501 *et seq.* The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 17th Floor Conference Room, Side B, of the L & C Tower located at 401 Church Street, Nashville, Tennessee at 10:00 a.m. (CST), on the 19th day of September, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Radiological Health to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days before the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Contact the Tennessee Department of Environment and Conservation, ADA Coordinator, Isaac Okoreeh-Baah, 401 Church Street, L & C Annex, Seventh Floor; Nashville, TN 37243; (615) 532-0009 or 1-888-867-2757. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of this notice of rulemaking hearing, contact: Barbara A. Davis; Division of Radiological Health, Central Office; L & C Annex, Third Floor; 401 Church Street; Nashville, TN 37243-1532, 615-532-0364.

SUBSTANCE OF PROPOSED AMENDMENTS

Subparagraphs (3)(d) and (e) of Rule 1200-2-10-.24 Registration are amended by deleting (e), adding the words “and (5)” at the end of item (d)1., adding sub items (d)1.(i) and (ii), renumbering item 4. to item 5., adding the words “or (5)” before the word “shall” in item 5., adding the words “for the following fee year” at the end of item 5., adding sub items (d)5.(i) and (ii), and adding item (d)4., so that as amended items (3)(d)1., 4. and 5. shall read:

- (3) (d) 1. All tubes subject to registration are inspected in accordance with subparagraph 1200-2-10-.27(3)(a) and (5).
 - (i) For purposes of the eighteen percent (18%) fee, the first inspection performed on an x-ray tube on or after January 1, 2003, will establish a baseline date for that tube.
 - (I) Each subsequent inspection of a tube shall be performed within 30 days of the appropriate anniversary of the baseline date, according to the schedule set out in 1200-2-10-.27(3)(a).
 - (II) An inspection performed more than 30 days before or after the appropriate baseline date shall establish a new baseline date for that tube.
 - (III) An inspection performed more than 30 days after a baseline date shall not qualify the registrant for the eighteen percent (18%) fee.
 - (IV) An inspection performed more than 30 days before a baseline date may qualify the registrant for the eighteen percent (18%) fee.

- (ii) Reserved.
- 4. The registrant submits to the Division, at the address given in Rule 1200–2–4–.07:
 - (i) Copies of the appropriate State evaluation forms within 60 days after the inspection.
 - (ii) Copies of applicable service reports to document correction of any deficiencies noted within 60 days after the inspection.
 - (iii) For inspections performed on and after January 1, 2002, a signed “X-Ray Inspection Notification and Certification of Compliance” form within 60 days of the inspection.
- 5. Inspections found by the Division to be unsatisfactory under this subparagraph or under paragraph 1200–2–10–.27(4) or (5) shall not qualify for the 18 percent (18%) fee for the following fee year.
 - (i) The registrant shall correct and re-submit the report(s) and documentation of an inspection found to be unsatisfactory within 30 days of the date of notification by the Division. Failure to correct and re-submit the report(s) and documentation of an unsatisfactory inspection will subject the registrant to the Division’s normal enforcement actions, penalties and assessments.
 - (ii) The 30-day correction period shall not establish a new baseline or qualify for reduced fee for the following calendar year.

Authority: *T.C.A. §§68–202–101 et seq. and 4–5–201 et seq.*

Item (4)(a)6. and paragraph (5) of Rule 1200–2–10–.27 Inspections are amended by adding the word “above” before the word “sets” in item 6. and by adding the following, so that as amended item (4)(a)6. and paragraph (5) shall read:

- | | |
|--|---|
| <p>(4) (a) 6. Two (2) notarized letters of reference from persons registered to provide inspections for reduction in fees and meeting any of the above sets of criteria certifying to the individual’s capabilities to perform the necessary inspections</p> | <p>Five years of applied health physics experience in a program with radiation safety problems similar to those in the program to be surveyed</p> |
|--|---|
- (5) Inspections satisfactory to the Division. The following constitute a proper inspection and must occur:
- (a) The inspection of an x-ray facility subject to registration under “State Regulations for Protection Against Radiation” shall identify the compliance status of the facility and each piece of equipment subject to registration with respect to requirements in Chapters 1200–2–4, 5, 6, 8, 9 and 10.
 - (b) The inspection shall address all areas of compliance including but not limited to:
 - 1. Proper registration of all equipment subject to registration;
 - 2. Timely determination of compliance with appropriate facility requirements;
 - 3. Timely determination of compliance with appropriate machine requirements for each piece of equipment subject to registration;

4. The radiation safety program; and
 5. Required records and reports.
- (c) The qualified individual performing the inspection shall record the results of the inspection on evaluation forms provided by the Division, one form for each facility plus an appropriate form, or forms, for each piece of equipment. The evaluation forms shall describe the compliance status of the facility and equipment, as it exists at the time of the inspection. The Division will accept computer-generated forms if these contain the same questions as Division forms contain.
 - (d) The qualified individual shall provide signed and dated evaluation and certification of compliance forms to the registrant promptly.
 - (e) The registrant shall submit evaluation and certification of compliance forms to the Division as set out in 1200-2-10-.24(3)(d).
 - (f) A registrant whose inspection reveals an item of non-compliance shall correct the item promptly following notification by the qualified individual. The registrant shall provide appropriate documentation of the correction to the Division as set out in 1200-2-10-.24(3).
 - (g) If as a result of inadvertent error or excusable neglect a tube(s) is not inspected, the Commissioner or the Commissioner's designee may grant the eighteen percent (18%) fee for all other tubes for the following fee year provided they were timely inspected by a qualified individual.

Authority: *T.C.A. §§68-202-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.*

OTHER INFORMATION

Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Barbara A. Davis at the Division of Radiological Health, Central Office, address below, prior to or following the public hearing. However, the Division must receive such written comments in its Central Office by 4:30 p.m. CST, October 4, 2002, in order to assure consideration.

Copies of draft rules are available for review in the Public Access Areas of the following Departmental Environmental Assistance Centers:

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

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

Knoxville Environmental Assistance Center
2700 Middlebrook Pike, Suite 220
Knoxville, TN 37921-5602
(865) 594-6035 / 1-888-891-8332

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

Copies are also available for review at the Division of Radiological Health, Central Office:
Division of Radiological Health
L & C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532.

The "DRAFT" rules may also be accessed for review at the Department's World Wide Web Site located at <http://www.state.tn.us/environment.htm>

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-32)

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400
DRYCLEANER ENVIRONMENTAL RESPONSE BOARD
DIVISION OF SUPERFUND**

There will be a hearing before the staff of the Drycleaner Environmental Response Board, Tennessee Department of Environment & Conservation, Division of Superfund, Drycleaner Environmental Response Program, to consider the amendments of rules pursuant to Tennessee Code Annotated 68-217-101 et. seq., the "Tennessee Drycleaner's Environmental Response Act". 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 17th floor Conference Room (Room A) of the L&C Tower located at 401 Church Street, Nashville, Tennessee at 1:00 PM Central Time on the 28th day of September, 2002. Written comments will be considered if received by the close of business, October 11, 2002, at the Division of Superfund, 4th Floor, L&C Annex, 401 Church Street, Nashville, TN 37243-1538.

Any individuals with disabilities who wish to participate in these proceedings should contact the Tennessee Department of Environment & Conservation 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 Department to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department's ADA Coordinator, Isaac Okoreeh-Baah at the 7th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243, and (615) 532-0059.

For a copy of this rulemaking hearing, contact: LaRose Dean, Department of Environment and Conservation, Division of Superfund, 4th Floor, L&C Annex, 401 Church Street, Nashville, TN 37243-1538, telephone (615) 741-2281.

**SUBSTANCE
OF
PROPOSED RULE AMENDMENTS**

**CHAPTER 1200-1-17
DRYCLEANER ENVIRONMENTAL RESPONSE**

AMENDMENTS

Rule 1200-1-17-.02 Definitions (7) is amended by deleting paragraph (7) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.02(7) shall read:

“Dense Non-Aqueous Solvent or Product” means any chemical or mixture of chemicals, other than water-based solvent, that is used in the drycleaning of clothes and that does not float on water (in pure form has a specific gravity greater than 1.0)

Rule 1200-1-17-.02(14) is amended by deleting paragraph (14) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.02(14) shall read:

“Drycleaning Solvent” or “Solvent” means any and all non-aqueous solvents or products used, or intended for use, in the cleaning of garments and other fabrics at a drycleaning facility and includes, but is not limited to, dense non-aqueous solvents such as chlorinated solvents like perchloroethylene (perc) also known as tetrachloroethylene, and light non-aqueous solvents such as petroleum-based solvents like Stoddard Solvent, and the products into which all such solvents or products degrade that impact or may impact human health or the environment.

Rule 1200-1-17-.02(18) is amended by deleting paragraph (18) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.02(18) shall read:

“Hydrocarbon-Based Drycleaning Solvent” means a light non-aqueous solvent or product that is used as a primary cleaning agent in drycleaning operations and includes but is not limited to petroleum solvents such as Stoddard solvent;

Rule 1200-1-17-.02(24) is amended by deleting paragraph (24) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.02(24) shall read:

“Light Non-Aqueous Solvent or Product” means any chemical or mixture of chemicals, other than water-based solvent, that is used in the drycleaning of clothes and that floats on water (in pure form has a specific gravity less than 1.0)

Rule 1200-1-17-.02(27) is amended by deleting paragraph (27) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.02(27) shall read:

“Non-Hydrocarbon-Based Drycleaning Solvent” means a dense non-aqueous solvent or product that is used as a primary cleaning agent in drycleaning operations and includes but is not limited to halogenated chemical compounds such as perchloroethylene, trichloroethylene, and chlorofluorocarbons;

Rule 1200-1-17-.03 Registration Fees And Surcharges, Certificate Issuance (3)(a)2 is amended by deleting subparagraph 2 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.03(3)(a)2 shall read:

Persons registering a facility shall respond to all inquiries on the registration form completely and truthfully. On any registration form submitted after October 15, 1997, any material misrepresentation or omission regarding said registration may be considered willful noncompliance with these rules and may serve as sufficient basis for the Department’s denial of an application for entry into the program, or for revocation or non-renewal of a registration issued in reliance on said representation, or for a denial or withdrawal of a grant for entry into the program.

Rule 1200-1-17-.03(3)(c) is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.03(3)(c) shall read:

Beginning with calendar year 2004 registration, each drycleaning facility or abandoned drycleaning facility shall pay an annual per-site registration fee as follows:

Category 1 – Drycleaning facilities that purchased or obtained less than 75 gallons of dense non-aqueous solvents or products and/or less than 750 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year) shall pay an annual registration fee of \$500.00

Category 2 – Drycleaning facilities that purchased or obtained at least 75 gallons but less than 150 gallons of dense non-aqueous solvents or products or at least 750 gallons but less than 1500 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year) shall pay an annual registration fee of \$1,000.00

Category 3 – Drycleaning facilities that purchased or obtained at least 150 gallons of dense non-aqueous solvents products or at least 1500 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year), or

Drycleaning facilities that purchased or obtained at least 75 gallons of dense non-aqueous solvents or products and at least 750 gallons of light non-aqueous solvents or products during the preceding fiscal year (3rd and 4th quarters of the prior calendar year and the 1st and 2nd quarters of the current calendar year) shall pay an annual registration fee of \$1,500.00

The annual registration fee for abandoned drycleaning facilities is \$1,500.00 per year.

After the effective date of this rule, the initial registration fee category for active facilities shall be based on the total solvent capacity of the machine(s). The proceeds from all facility registrations shall be deposited into the Drycleaner Environmental Response Fund. Should the total collections from annual registration fees and solvent surcharges not exceed \$1,250,000.00 during any fiscal year, the per site annual registration fee for the subsequent year shall be increased by an amount sufficient to reach the threshold of \$1,250,000.00 or a minimum of 10%.

Rule 1200-1-17-.03(3)(g) is amended by deleting subparagraph (g) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.03(3)(g) shall read:

A registration form and other required documents shall be submitted to the program at least two weeks prior to commencing operations. A revised registration form shall be submitted within 30 days of a change in information which requires filing a revised registration. A change in information which requires filing a revised registration form includes the following: a change in ownership, operation or management of the facility or real property, or a change in the facility name previously reported to the DCERP. The form shall be submitted by one of the persons described in Rule .03(2)(a), (b), or (d).

Rule 1200-1-17-.03(6)(a) is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.03(6)(a) shall read:

The surcharge fee is applicable for all drycleaning solvent purchased or transferred after September 30, 1995. The surcharge fee is ten dollars (\$10.00) for each gallon of dense non-aqueous solvent or product and one dollar (\$1.00) for each gallon of light non-aqueous solvent or product obtained by a drycleaning facility.

Rule 1200-1-17-.03(7)(b) is amended by deleting subparagraph (b) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.03(7)(b) shall read:

The Department shall not issue a Certificate of Registration to any facility when any fees, surcharges or penalties lawfully levied by the Department under these rules have not been timely paid.

Rule 1200-1-17-.04 Best Management Practices (3)(a) is amended by deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(3)(a) shall read:

As of October 15, 1997, all drycleaning facilities shall comply with the Class 1 BMPs because they are critical for the prevention of drycleaning solvent releases.

Rule 1200-1-17-.04(3)(b) is amended by deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(3)(b) shall read:

Class 2 BMPs

As of October 15, 2007, all active drycleaning facilities shall comply with Class 2 BMPs because they are critical for the prevention of drycleaning solvent releases.

Rule 1200-1-17-.04(3)(a)2.(ii) is amended by deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(3)(a)2.(ii) shall read:

The following hazardous waste activities, which are required under these rules, are only applicable to drycleaning facilities using dense non-aqueous solvents or products and include:

Rule 1200-1-17-.04(3)(a)2.(iii) is amended by renumbering the subparagraph as Rule 1200-1-17-.04(3)(a)2.(iv).

Rule 1200-1-17-.04(3)(a)2.(iii) is amended by adding the following language as new clause (iii), so that, as amended, Rule 1200-1-17-.04(3)(a)2.(iii) shall read:

The following waste activities, which are required under these rules, are applicable to drycleaning facilities using light non-aqueous solvents or products and include:

- (I) Any waste containing drycleaning solvent shall be placed in a sealed container and removed from the facility. The waste containing drycleaning solvent shall, regardless of the drycleaning facility's amount of solvent consumption or waste generation, be disposed at an appropriate disposal facility.
- (II) A record of the date, quantity of waste removed and the disposal location shall be maintained at the drycleaning facility or a designated alternate site for inspection by the Department upon request. These records shall be maintained for a minimum of five years.

Rule 1200-1-17-.04(3)(a)(4)(ii) is amended by deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(3)(a)(4)(ii) shall read:

If it becomes reasonably apparent while conducting environmental response activities that an interim action is warranted to abate or mitigate an imminent and substantial danger to human health or the environment, the PEP shall take such action within twenty-four (24) hours after discovery of the danger and shall notify the Department of said actions.

Rule 1200-1-17-.04(3)(a)(5) is amended by deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(3)(a)(5) shall read:

Certification

Effective October 15, 1998, each drycleaning facility shall be staffed by at least one person who is a Certified Environmental Drycleaner (CED), as certified by the International Fabricare Institute, or has a certification deemed equivalent by the Board to meet this requirement. In the event of termination of employment or loss of certification by the CED the facility has six months to replace the CED.

Rule 1200-1-17-.04(3)(a)(6) is amended by renumbering the subparagraph and deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(3)(b)(4) shall read:

Solvent Delivery Systems

Drycleaning solvent shall be delivered to drycleaning facilities in such a manner as to minimize the possibility of spills and releases of solvent during transfer of the material. No pouring of drycleaning solvents from open buckets or other similar methods will be allowed. Delivery of drycleaning solvents shall be adequately monitored to prevent overfills and spills. Beginning October 15, 2000, dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems.

Rule 1200-1-17-.04(4)(a) is amended by deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(4)(a) shall read:

Class 1 BMPs

As of October 15, 1997, all in-state wholesale distribution facilities shall comply with the Class 1 BMPs because they are critical for the prevention of drycleaning solvent releases.

Rule 1200-1-17-.04(4)(a)4 is amended renumbering the subparagraph and deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(4)(b)3 shall read:

Solvent Delivery Systems

Drycleaning solvent shall be delivered to drycleaning facilities in such a manner as to minimize the possibility of spills and releases of solvent during transfer of the material. No pouring of drycleaning solvents from open buckets or other similar methods will be allowed. Delivery of drycleaning solvents shall be adequately monitored to prevent overfills and spills. Beginning October 15, 2000, dense non-aqueous solvents or products delivered to drycleaning facilities shall be via closed, direct-coupled delivery systems.

Rule 1200-1-17-.04(4)(b) is amended by deleting the subparagraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(4)(b) shall read:

Class 2 BMPs

As of October 15, 2007, all in-state wholesale distribution facilities shall comply with the Class 2 BMPs because they are critical for the prevention of drycleaning solvent releases.

Rule 1200-1-17-.04(5) is amended by deleting the paragraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(5) shall read:

BMPs for New and Reactivated Drycleaning Facilities and In-State Wholesale Distribution Facilities

Initial registrations with the DCERP after October 15, 1997 for active drycleaning facilities and in-state wholesale distribution facilities shall include a certification that all Class 1 BMPs and Class 2 BMPs have been met. Any registered active drycleaning facility or in-state wholesale distribution facility that ceases operation for a period of twelve (12) consecutive months or longer, then resumes operations must re-register with DCERP, and such re-registration is considered an initial registration. A facility inspection may be required for the purpose of ensuring compliance. The inspection shall be done according to a format and schedule determined by the Department.

Rule 1200-1-17-.04(6)(b) is amended by deleting the paragraph in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.04(6)(b) shall read:

A request for an extension for BMP implementation shall be made in writing by a facility owner or operator. Requests for a BMP extension shall include: a detailed breakdown of the estimated BMP implementation costs, description of the work required to meet BMPs, an explanation as to why compliance with BMPs is technically infeasible or why the expected costs are prohibitive, and a description of any type of BMPs or other technical upgrades that have been put in place since October 15, 1997. Additional information may also be requested by the Department as part of a BMP extension request.

Rule 1200-1-17-.05 Program Qualifications And Procedures For The Tennessee Drycleaner Environmental Response Program (3) is amended by deleting subparagraph (3) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(3) shall read:

Facility Inspection

If a facility inspection is required by the Department, the PEP shall perform the facility inspection. At a minimum, the facility inspection shall include a records review and an on-site inspection. The records review shall include, but not necessarily be limited to, documentation of the determination of FTEs (for those years fees were based on FTEs), solvent purchases, waste handling practices, equipment maintenance and repair, equipment upgrading, and other items requested by the Department. The on-site inspection shall include, but not necessarily be limited to, evaluation of equipment, operations, containment, solvent storage, waste disposal, signs or evidence of a release, compliance with BMPs, and other items requested by the Department. The PEP shall submit a facility inspection report to the Department in a format and according to a schedule determined by the Department. A facility may be re-inspected by Department staff.

Rule 1200-1-17-.05(4)(b)4 is amended by deleting subparagraph 4 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(4)(b)4 shall read:

Notwithstanding the provisions of Rule 1200-1-17-.04(4)(b) and Rule 1200-1-17-.04(4)(b) if the Department's records reveal that applicable Class 1 and Class 2 BMPs have not been implemented, the facility operator will not be accepted into the program and will not be eligible for reimbursement of response costs other than the initial facility inspection. Except as provided in Rule .04(7) the facility operator will be accepted into the program and will be eligible for fund reimbursement after correcting any such deficiencies. The PEP may request follow-up inspections after correcting deficiencies. However, all facility inspections subsequent to the initial facility inspection conducted at the PEP's request will not be Fund reimbursable.

Rule 1200-1-17-.05(6)(c) is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(6)(c) shall read:

At all stages within this program the approval of additional work to be funded by the DCERP will be done with consideration for the relative threats to human health and the environment associated with each site. Sites in the program are at any time subject to reprioritization by the Department based upon the receipt of additional data that may affect the prioritization determination.

Rule 1200-1-17-.05(9)(a)1 is amended by deleting subparagraph 1 in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(9)(a)1 shall read:

Based on the results of a solvent impact assessment or interim action and other relevant factors, the Department shall rank approved sites for remediation in one of two site remediation fund groups. The first group will be for sites which use or have released dense non-aqueous solvents or products. The second group shall be for sites which use or have released light non-aqueous solvents or products. A facility or site which is contaminated by both solvent types shall be placed in a group based on which solvent release poses the greatest threat~~risk~~ to human health and the environment.

Rule 1200-1-17-.05(9)(c) is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.05(9)(c) shall read:

The Department shall notify the PEP in writing of the site's remediation priority ranking group and the relative ranking for the site within that group. Sites in the program are at any time subject to reprioritization by the Department based upon the receipt of additional data that may affect the prioritization determination.

Rule 1200-1-17-.06 Withdrawing An Applicant's Grant Of Approval (1) is amended by adding subparagraph (c) so that, as amended, Rule 1200-1-17-.06(1)(c) shall read:

An applicant's intentional misrepresentation of material environmental conditions concerning the applicant's site, an applicant's unreasonable delaying submittal of pertinent site data and information, an applicant's filing or reporting of false, misleading, or inaccurate material information with the Department, or any other such intentional actions taken by the applicant which significantly impedes the Department's ability to properly evaluate the site and/or determine appropriate response actions for that site.

Rule 1200-1-17-.08 Administrative Guidelines For The Tennessee Drycleaner Environmental Response Fund (2)(b) is amended by deleting subparagraph (b) in its entirety and adding the following language, so that as amended, Rule 1200-1-17-.08(2)(b) shall read:

Each PEP requesting reimbursement of expenditures approved by the Board or the Department is required to accept responsibility for incurring costs associated with each request for reimbursement, based on the facility classification in Rule 1200-1-17-.03(3)(c) in the following amounts (deductibles):

Category	% of Each Reimbursement	Maximum
1	5%	\$5,000 per site, per clean-up
2	10%	\$10,000 per site, per clean-up
3	15%	\$15,000 per site, per clean-up
Abandoned Drycleaning Facility	25%	\$25,000 per site, per clean-up
In-state wholesale distribution facility	25%	\$25,000 per site, per clean-up

An impacted third party's deductible is the same as the facility for which Fund coverage is sought.

Rule 1200-1-17-.08(3)(c) is amended by deleting subparagraph (c) in its entirety and adding the following language, so that as amended, Rule 1200-1-17-.08(3)(c) shall read:

The costs for reasonable initial abatement and site stabilization activities are Fund eligible, up to \$5,000 and subject to applicable deductibles, without submission and prior Department approval of a cost proposal. The costs must be directly associated with containing or addressing a release of solvent or material containing solvent. Normal operating practices, including but not limited to the proper disposal of solvent or material containing solvent, are not considered initial abatement or site stabilization activities.

Rule 1200-1-17-.08(7)(a) is amended by deleting subparagraph (a) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(7)(a) shall read:

Applications for reimbursement of response costs shall be submitted in a format established by the Department and shall, at a minimum, include an itemization of all charges according to labor charges (individual name, DCERP personnel category, date, rate and number of hours worked), analytical charges, equipment charges, and other categories which may be identified by the Department, or which the applicant may wish to provide.

Rule 1200-1-17-.08(7)(d) is amended by deleting subparagraph (d) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(7)(d) shall read:

Applications for payment for the implementation of response actions may be submitted sixty (60) days following initiation of work to implement the work plan and at sixty (60) day intervals thereafter until completion of the authorized activities. For work phases that will be completed within a relatively short time frame (i.e., three months or less) a reimbursement application should be submitted following the completion of the pre-approved work plan. Interim billings for phases of work that will not be completed in a short time frame shall include the expenses for a specified period of time (i.e. January-March) and shall to the extent practicable not have overlapping dates with prior or subsequent interim billings. The Department may request a status report to be submitted with each application for payment. Upon request, the Department may approve interim payments at more frequent intervals.

Rule 1200-1-17-.08(7)(f) is amended by deleting subparagraph (f) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(7)(f) shall read:

Notwithstanding the provision of Rule 1200-1-17-.08(7)(d), in order to be eligible for payment from the Fund, an application for reimbursement, must be received, by the program, within one year from the date expenses were incurred regardless of the duration of the work phase. For example: the personnel expenses of a geologist performing work activities, related to a specific site, on May 10th of the prior year would not be reimbursable by the program if the reimbursement application was received on or after May 11th of the current year.

Rule 1200-1-17-.08(8)(c) is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.08(8)(c) shall read:

The PEP is responsible for final payments to the contractor(s) performing the work including program deductibles. The PEP is responsible for making timely payments to the contractor(s).

Rule 1200-1-17-.09 Contractors is amended by deleting the lead-in sentence in its entirety and adding the following language as the lead-in, so that, as amended, Rule 1200-1-17-.09 shall read:

Contractors are not beneficiaries of this Fund and shall have no right of claim against it. And any and all claims shall be against the PEP who hired the contractor.

Neither a PEP nor the PEP's contractor shall file false or inaccurate information with the Department. Both the PEP and the PEP's contractor are required to follow the methods and procedures established by the DCERP for actions related but not limited to release response, facility inspections, investigations, and remediation of sites. The PEP is required to compile and maintain copies of all technical or other documentation and reports required by the Department, in the event that the contractor ceases to exist.

Rule 1200-1-17-.09(1) is amended by deleting subparagraph (1) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(1) shall read:

A Drycleaner Approved Contractor ("DCAC") is a person or company responsible for conducting and overseeing the inspection, investigation, or remediation of a drycleaner environmental response program (DCERP) site. The Department shall establish and maintain a list of approved DCACs according to this rule section. The DCAC list shall have three categories. There shall be one category for companies approved to perform facility inspections, a second category for companies approved to perform investigative work, and a third category for companies approved to perform remediation work. There may be one DCAC for facility inspection, another DCAC for site investigation, and one or more DCAC(s) for remediation of the site. There is nothing in these rules which prevents a company from applying to multiple DCAC categories. If a DCAC is approved for multiple categories, then the DCAC may perform services in any or all of the categories for which the DCAC is approved.

Rule 1200-1-17-.09(2)(a)1.(vi)(IV) is amended by deleting subparagraph (IV) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(a)1.(vi)(IV) shall read:

List the sites on which the employee worked where the employee either performed facility inspections, investigation, or remediation activities related to contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs). Describe the activities and duties performed by the employee.

Rule 1200-1-17-.09(2)(a)1.(vii) is amended by deleting subparagraph (I) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(a)1.(vii)(I) shall read:

If the company desires to be approved to perform facility inspections, provide descriptions of a minimum of three (3) different facility inspections or facility audits performed by company staff who will perform work under the DCERP during the past five (5) years at facilities which use or have on-site dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs).

Rule 1200-1-17-.09(2)(a)1.(vii) is amended by deleting subparagraph (II) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(a)1.(vii)(II) shall read:

If the company desires to be approved to perform investigations at sites in the DCERP, provide descriptions of a minimum of three (3) different investigations of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), in soil and/or ground water, which company staff, who will perform work under the DCERP, have performed in the past three years.

Rule 1200-1-17-.09(2)(a)1.(vii) is amended by deleting subparagraph (III) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(a)1.(vii)(III) shall read:

If the company desires to be approved to perform remediation phase work at sites in the DCERP, provide descriptions of a minimum of three (3) different soil and/or ground water remediation projects involving contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), which company staff, who will perform work under the DCERP, have performed in the past three years. Remediation phase work includes, but is not limited to, preparing work plans and cost proposals for remedial phase work, designing, conducting, and evaluating remedial pilot tests and associated data findings, writing and amending Remedial Alternatives Study reports or other remediation phase documents that may be requested by the Department, and designing, conducting, evaluating, and monitoring full-scale remediation site work and implementing full-scale plans of remediation.

Rule 1200-1-17-.09(2)(a)1.(vii)(V) is amended by deleting subparagraph (V) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(a)1.(vii)(V) shall read:

If a company desires to be approved for a combination of facility inspection, site investigation, and site remediation then, submit a minimum of three (3) sites for each category for which the company is applying.

Rule 1200-1-17-.09(2)(a)1.(vii)(VI) is amended by deleting subparagraph (VI) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(a)1.(vii)(VI) shall read:

In these descriptions, state the duties performed, type of facility inspected or contaminants investigated or remediated, results of the inspection, investigation or remediation and other pertinent information which would show the company's competency in inspection, investigation and/or remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs) (be specific). Only include sites worked by personnel who will work on DCERP sites. Indicate the personnel who performed the inspection, investigation, or remediation and describe their job duties. Limit the discussion to two (2) typed pages (minimum font size 10) per site per category;

Rule 1200-1-17-.09(2)(a)1. is amended by deleting subparagraph (viii) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(a)1.(viii) shall read:

Attach letters of recommendation for two (2) sites described above from clients describing the company's facility inspection or facility audit activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for drycleaner inspection activities. Attach letters of recommendation for two (2) sites described above from clients describing the company's investigation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for investigation activities. Attach letters of recommendation for two (2) sites described above from clients describing the company's remediation activities at the site and the clients' opinions of the quality of work performed by company's personnel if the company is applying to be approved for remediation activities. If letters of recommendation are unavailable, other approved forms of verification can be substituted; and

Rule 1200-1-17-.09(2)(c) is amended by deleting subparagraph (c) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(2)(c) shall read:

Companies which satisfactorily demonstrate to the Department's review committee that the company has: successfully performed significant past activities in facility inspection, investigation and/or remediation of contamination resulting from the release of dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), through the site descriptions and letters of reference required in this Rule, not violated environmental or other laws referenced in the sworn statement, paid the appropriate fee, and completed the other requirements listed above shall be included in the next published approved contractor list in the appropriate category(ies) following receipt by the Department of the required insurance certificate. For initial evaluation to become a DCAC, it shall be assumed by the Department that if a company has sufficient experience and qualifications to perform investigation, and/or remediation activities at sites contaminated by dense non-aqueous solvents or products, excluding polychlorinated biphenyls (PCBs), then the company has sufficient qualifications to perform comparable activities at sites contaminated with Stoddard or other drycleaning solvents. If the company, its officers, its principals, or any of the employees referenced in Rule .09(2)(a)1.(i) or Rule .09(2)(a)1.(vi) above have previously been removed from the DCAC list or have been the subject of any professional license revocation or suspension, or have been assessed a civil penalty for violation of any environmental law in Tennessee or comparable law in another jurisdiction, the company shall also be required to satisfactorily demonstrate to the Department that the circumstances, including the reason(s) for such actions have been corrected and will not reoccur. A company which is not approved as a DCAC may appeal the Department's determination to the Board, however the appeal must be filed within 30 days of the Department mailing the certified letter notifying company of non-approval. The list of approved contractors shall be updated at least annually.

Rule 1200-1-17-.09(2)(d) is amended by deleting the lead-in sentence to subparagraph (d) in its entirety and adding the following language as the lead-in, so that, as amended, Rule 1200-1-17-.09(2)(d) shall read:

Prior to October 31st of each year, each DCAC shall submit a renewal application including the following and other information requested by the Department on the renewal application:

Rule 1200-1-17-.09(3)(d) is amended by deleting subparagraph (d) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(3)(d) shall read:

The DCAC shall have a written contract with the owner or operator of the facility, or impacted third party at each Fund eligible site and the contract shall contain the following sentences conspicuously located on the first page of the contract:

(Company's Name) WILL/WILL NOT (mark one) USE THE DRYCLEANER ENVIRONMENTAL RESPONSE PROGRAM'S REASONABLE RATE SCHEDULE WHEN INVOICING (insert name of drycleaner owner, operator, or impacted third party) FOR THE EXPENSES INCURRED IN THE INVESTIGATION AND/OR CLEANUP OF THIS SITE;

ON BEHALF OF (Applicant's Name), (Company's Name) WILL PREPARE AND SUBMIT TIMELY REIMBURSEMENT APPLICATIONS IN ACCORDANCE WITH DCERP RULES INCLUDING RULE 1200-1-17-.08(7)(d) WHICH ALLOWS APPLICATIONS FOR PAYMENTS TO BE SUBMITTED 60 DAYS FOLLOWING INITIATION OF WORK AND AT 60 DAY INTERVALS THEREAFTER. IN ADDITION, RULE 1200-1-17-.08(7)(f) REQUIRES THAT IN ORDER TO BE ELIGIBLE FOR PAYMENT FROM THE FUND, AN APPLICATION FOR REIMBURSEMENT MUST BE RECEIVED, BY THE PROGRAM, WITHIN ONE YEAR FROM THE DATE EXPENSES WERE INCURRED REGARDLESS OF THE DURATION OF THE WORK PHASE.

Rule 1200-1-17-.09(3) is amended by adding subparagraph (n), so that, as amended, Rule 1200-1-17-.09(3)(n) shall read:

If it becomes reasonably apparent while conducting environmental response activities that an interim action is warranted to abate or mitigate an imminent and substantial danger to human health, or the environment the DCAC shall take such action within twenty-four (24) hours after discovery of the danger and shall provide notice to the PEP of said action.

Rule 1200-1-17-.09(5) is amended by deleting subparagraph (f) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(5)(f) shall read:

Misrepresentation of material environmental conditions concerning the site, unreasonable delaying submittal of pertinent site data and information, filing or reporting of false, misleading, or inaccurate material information with the Department, or any other such intentional actions which significantly impedes the Department's ability to properly evaluate the site and/or determine appropriate response actions for that site.

Rule 1200-1-17-.09(5) is amended by adding subparagraph (t), so that, as amended, Rule 1200-1-17-.09(5)(t) shall read:

Fails to submit timely reports or reimbursement requests to the Department

Rule 1200-1-17-.09(10) is amended by deleting subparagraph (10) in its entirety and adding the following language, so that, as amended, Rule 1200-1-17-.09(10) shall read:

A person or company working as a subcontractor under contract to a DCAC is not required to be classified as a DCAC. The subcontractor must maintain all applicable license(s) and/or registration(s) required in the state of Tennessee for work performed. The DCAC must ensure that subcontractors performing remediation activities have a valid Tennessee Contractor's License with a Specialty Classification to perform remediation of hazardous substance or hazardous waste sites or the equivalent with a monetary limitation of at least five hundred thousand dollars (\$500,000).

Rule 1200-1-17-.09 is amended by adding subparagraph (11), so that, as amended, Rule 1200-1-17-.09(11) shall read:

The DCAC must be the lead contractor and cannot be a subcontractor to a non-DCAC functioning as the primary contractor. For sites with multiple DCACs, the program shall consider the DCAC with the qualifications for that particular work phase to be the primary DCAC.

Rule 1200-1-17-.09 is amended by adding paragraph (12), so that, as amended, Rule 1200-1-17-.09(12) shall read:

A Drycleaner Approved Contractor (DCAC) may employ the environmental professional labor services of contractors or individuals who are not recognized by this program as a Drycleaner Approved Contractor. In such cases, however, the DCERP still requires that the qualifications and proposed DCERP billing titles of any staff that are used on a subcontracted basis be provided to the DCERP for review. The DCAC remains responsible for the work that is done by any staff under its employ, including subcontracted staff. The DCERP also requires that any subcontracted professional labor services be billed through the DCAC and not billed to the DCERP or to the applicant separately or directly by any subcontracted labor entity. These measures are in place to ensure maintenance of the DCAC as the primary responsible party for work approved by the DCERP and work conducted and invoiced to the DCERP.

Rule 1200-1-17-.09 is amended by adding paragraph (13), so that, as amended, Rule 1200-1-17-.09(13) shall read:

It is the responsibility of DCACs working in this program to seek written clarification from the DCERP concerning whether DCERP-issued approvals of work plans, project budgets, or other such items submitted by one DCAC to the DCERP are transferable with no modifications to another DCAC. Such situations can occur when there is a change in DCAC during the course of a project. The DCERP does not consider work plans, project budgets, and other similar items to automatically remain in force and transfer 'as-is' over to the new DCAC when a change in DCAC occurs.

Rulemaking Authority: *T.C.A. Sections 68-217-105 and 4-5-202. Substantive Authority:* *T.C.A. Section 68-217-101 et. seq.*

Any questions concerning this notice may be directed to Frank Grubbs, Division of Superfund, 4th Floor, L&C Annex, 401 Church Street, Nashville, TN 37243-1538 at 615/532-0910.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-31)

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

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of an amendment to a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-116, 68-29-117, and 68-29-118. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 3rd day of October, 2002.

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

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

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

SUBSTANCE OF PROPOSED RULE

AMENDMENT

Rule 1200-6-1-.22 Qualifications, Responsibilities and Duties of Testing Personnel, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended the new subparagraph (1) (a) shall read:

- (1) (a) A baccalaureate degree in medical technology or in one of the biological, chemical or physical sciences, and

with the completion of medical laboratory technologist training program that was, at the time of graduation, either

1. approved or under the auspice of the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS); or
2. approved by a national accrediting agency acceptable to the Board; or
3. completed in a specialty program conducted by a hospital or other institution approved pursuant to Rule 1200-6-2-.04; or

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-29-105, 68-29-116, 68-29-117, and 68-29-118.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 24th day of July, 2002. (07-17)

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240

DIVISION OF FAMILY ASSISTANCE

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 15th Floor, Puett Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 pm CDT on Wednesday, September 18, 2002.

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

For a copy of the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Tennessee Tower, 312 8th Avenue North, 26th Floor, Nashville, TN 37243, telephone number (615) 741-9534.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1240-1-2 **FAMILY ASSISTANCE UNIT**

AMENDMENTS

Rule 1240-1-2-.02 Household Concept - Food Stamps Only, is amended by deleting Paragraph (6), Subparagraph (b), Parts 1 through 8 in the entirety, and by substituting the following language, so that, as amended, Paragraph (6), Subparagraph (b), Parts 1 through 11 shall read:

- (b) Excluded Household Members. The following individuals residing with a household shall be excluded from the household when determining the household's size for the purpose of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of excluded individuals shall be considered available to the remaining household members. Such individuals may not participate in the program as separate households:
1. Ineligible aliens or individuals with questionable citizenship.
 2. Individuals disqualified for failure to provide or to apply for a social security number.
 3. Individuals disqualified for intentional program violation.
 4. Persons disqualified for non-compliance with the Food Stamp Program work requirements, including voluntary quit.
 5. An individual who is convicted of trafficking food stamp benefits of \$500 or more is permanently disqualified.
 6. Individuals who have been convicted by a federal, state, or local court of a second violation of trading food stamp benefits for a controlled substance.
 7. Individuals who have been found by a federal, state, or local court to have committed a first violation of trading firearms, ammunition, or explosives for food stamp benefits.
 8. An individual who is found to have made fraudulent statement or representation with respect to identity or residence in order to receive multiple benefits simultaneously shall be ineligible to participate in the Food Stamp Program for ten (10) years.
 9. An individual who is determined to be a fleeing felon or parole violator under 1240-1-2-.02(4)(c) above is ineligible for the Food Stamp Program.
 10. An individual who is an ineligible able-bodied adult without dependents.
 11. An individual convicted under federal or state law of a felony offense which occurred after August 22, 1996 and which involved the possession, use or distribution of a controlled substance, unless the individual is complying with or has already complied with all obligations (including any substance abuse treatment requirements) imposed by the criminal court, and
 - (i) the conviction was not classified as a Class A felony or its equivalent, if the offense occurred outside of Tennessee; and
 - (ii) is currently participating in a substance abuse treatment program approved by the Department of Human Services; or

- (iii) if not actively participating in a substance abuse treatment program approved by the Department of Human Services, is currently enrolled in such a program, but is on a waiting list for participation, and enters the treatment program at the first opportunity; or
- (iv) has satisfactorily completed a substance abuse program approved by the Department of Human Services; or
- (v) a treatment provider licensed by the Department of Health, Division of Alcohol and Drug Abuse Services, has determined that the individual does not need substance abuse treatment according to TennCare guidelines.

Rule 1240-1-2-.02 Household Concept - Food Stamps Only, is amended by deleting the current language in Part 2, under Paragraph (6), Subparagraph (c), and by substituting the following language, so that, as amended, Paragraph (6), Subparagraph (c), Part 2, Subparts (i) through (v) shall read:

2. Individuals disqualified for intentional program violation, conviction of trafficking in food stamp benefits of \$500 or more, fraudulent misrepresentation of identity or residence in order to receive multiple benefits simultaneously; found by a federal, state or local court to have committed a second violation of trading food stamp benefits for a controlled substance; found by a federal, state or local court to have committed a first violation of trading of firearms, ammunition or explosives for benefits; convicted of a felony offense which occurred after August 22, 1996 and involved the possession, use or distribution of a controlled substance, except as provided at 1240-1-2-.02(6)(b)11; or determined to be a fleeing felon or a probation/parole violator as defined in 1240-1-2-.02(6)(b)9, or for non-compliance with the Program work requirements as stated in 1240-1-3-.43 and .44.
 - (i) Resources. The resources of such disqualified household members shall continue to count in their entirety to the remaining household members.
 - (ii) Income. The earned and/or unearned income of the disqualified member(s) shall continue to count in their entirety to the remaining household members.
 - (iii) Deductible Expenses. The entire household's allowable earned income deduction, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.
 - (iv) Determining Eligibility and Benefit Level. The disqualified member(s) shall not be included when determining the household's size for the purpose of assigning a benefit level to the household, or comparing the household's monthly income with the eligibility standards, or for comparing the household's resources with the resource eligibility limits.
 - (v) Reduction or Termination of Benefits Within the Certification Period. Whenever an individual is disqualified within the household's certification period, the worker shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file. The worker shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits unless the household has already had a fair hearing on the amount of the claim.

Authority: *T.C.A. §§ 4-5-201 et seq., 4-5-202; 71-1-105(12), 71-3-154(k), 71-5-308; Acts of 2002, Chapter 715 §§ 1, 2 (July 1, 2002); 7 USC § 2015; 21 USC § 862a(d); and 7 CFR §§ 273.1, 273.2, 273.5, 273.10 and 273.16.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-30)

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

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 15th Floor, Puett Conference Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CDT on Wednesday, September 18, 2002.

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

For a copy of the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Tennessee Tower, 312 8th Avenue North, 26th Floor, Nashville, TN 37243, telephone number (615) 741-9534.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1240-1-46
FAMILY ASSISTANCE UNIT
FAMILIES FIRST PROGRAM**

AMENDMENTS

Rule 1240-1-46-.02 Filing Unit and Assistance Group, is amended by adding a new Part to be numbered 6 under Paragraph (2), Subparagraph (c), so that, as amended, Paragraph (2), Subparagraph (c), Part 6 shall read:

6. An individual convicted of a felony offense that occurred after August 22, 1996 under federal or state law which involved the possession, use or distribution of a controlled substance, unless the individual is complying with or has already complied with all obligations (including any substance abuse treatment requirements) imposed by the criminal court, and

- (i) the conviction was not classified as a Class A felony, or its equivalent if the offense occurred outside of Tennessee, and
- (ii) is currently participating in a substance abuse treatment program approved by the Department of Human Services; or
- (iii) if not actively participating in a substance abuse treatment program approved by the Department of Human Services, is currently enrolled in such a program, but is on a waiting list for participation, and enters the treatment program at the first opportunity; or
- (iv) has satisfactorily completed a substance abuse program approved by the Department of Human Services; or
- (v) a treatment provider licensed by the Department of Health, Division of Alcohol and Drug Abuse Services, has determined that the individual does not need substance abuse treatment according to TennCare guidelines.

Authority: *T.C.A. §§ 4-5-201 et seq.; 71-1-105(12), 71-3-154(k), 71-5-308; Acts of 2002, Chapter 715 §§ 1, 2 (July 1, 2002); 21 USC § 862a(d); 42 USC § 1315(a); 45 CFR §§ 206.10 and 233.107.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-29)

**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 new rules pursuant to TCA §§ 71-3-501 et seq. The hearings 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 Second Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Monday, September 16, 2002; in Conference Room A, 7th Floor, State Office Building; at 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Time on Tuesday, September 17, 2002; and in the Second Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Time on Wednesday, September 18, 2002

Any individuals with disabilities who wish to participate in these proceedings or 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 or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Fran McKinney Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563, (TTY)- (800) 270-1349.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1240-4-1 STANDARDS FOR GROUP CHILD CARE HOMES

AMENDMENTS

Paragraph (7) of subchapter 1240-4-1-.02, Ownership and Administration, is amended by deleting paragraph (7) in its entirety and by re-designating existing paragraph (8) as paragraph (7).

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

Chapter 1240-4-1, Standards for Group Child Care Homes, is amended by adding the following new subchapter 1240-4-1-.07, Transportation, and by re-designating the existing subchapter 1240-4-1-.07, Food, as subchapter 1240-4-1-.08, Food, and by re-designating all remaining subchapters and the Table of Contents accordingly:

1240-4-1-.07 TRANSPORTATION.

- (1) On field trips (whether on foot or in a vehicle), an additional caregiver, in addition to any monitor required by paragraph (8), shall be present to help with supervision.
- (2) Storage of firearms shall be prohibited in vehicles used to transport children.
- (3) Vehicle Requirements.
 - (a) The child care agency shall maintain documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer.
 1. The requirements of this part include vehicles used at anytime for the regular child care vehicle(s).
 2. Exception: the requirements of this part do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.
 - (b) The child care agency shall maintain documentation that designated child care staff perform daily a visual safety inspection of the vehicle, including an inspection of all tires for wear and adequate pressure, an inspection for working lights, signals, and wiper blades, and an inspection for properly functioning doors and windows.
 - (c) Special requirements for vehicles designed to carry ten (10) to eighteen (18) passengers which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR):
 1. A maximum number of ten (10) individuals, including the driver, all children and all adults, shall be transported in vehicles which are designed to carry ten (10) to eighteen (18) passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR). Exception: The requirements of this part do not apply to vehicles designated as applicable to small school buses that conform to the Federal Motor Vehicle Safety Standards (FMVSS) in 49 Code of Federal Regulations Part 571, or as it may be amended.

2. No individual shall ride, and no cargo, luggage or equipment of any type shall be placed, in the back portion of the vehicle that extends over the rear axle. Exception: The requirements of this part do not apply to vehicles designated as applicable to small school buses that conform to the Federal Motor Vehicle Safety Standards (FMVSS) in 49 Code of Federal Regulations Part 571, or as it may be amended.
 - (d) Effective January 1, 2005 all vehicles that the child care agency operates, for which it contracts, or which is otherwise under its direction or control, that are designed to carry ten (10) or more passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR), must conform to all Federal Motor Vehicle Safety Standards (FMVSS) designated as applicable to small school buses in 49 Code of Federal Regulations Part 571, or as it may be amended. Exception: The requirements of this part do not apply to vehicles used exclusively for the provision of occasional field trips.
- (4) Vehicle Identification.
- (a) The requirements of this paragraph are effective October 1, 2002.
 - (b) All vehicles used for the transportation of children enrolled in the child care agency that are operated by the agency, or for which it contracts, or which is otherwise under the direction or control of the agency must, as determined by the Department clearly and readily identify to the driving public that the vehicle is used for the transportation of child care children by displaying, on both sides of the vehicle and on the rear of the vehicle, the following information:
 1. The full name of the child care agency. If the name of the child care agency does not clearly designate the agency as a child care agency the words "Child Care" must be added to the name displayed on the vehicle;
 2. An emergency contact phone number for the child care agency; and
 3. The words "Child Care Complaint Hotline" followed by the Department of Human Services toll-free Child Care Complaint Hotline phone number.
 - (c) The information required in this part must be applied to the vehicle, in clearly contrasting colors, using standard colors to be determined by the Department, and using letters which are at least three (3) inches high and two (2) inches wide, in one of the following manners:
 1. Painted directly on the vehicle in accordance with the manufacturer's instructions using paint recommended by the manufacturer as appropriate for use on a vehicle; or
 2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless certified by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.
 - (d) Special Requirements for Centralized Transportation.
 1. Agencies which may own or operate more than one child care agency and which may provide centralized transportation services ; and/or
 2. Contractors which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency required by paragraph 1240-4-1-

.07(4)(b)1. and 2. above the full name and emergency contact number of the centralized operator or contractor. If the name of the centralized operator or contractor does not clearly designate the agency or entity as an agency or entity providing child care transportation, the words “Child Care” must be added to the name displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

(e) The requirements of this section apply to all vehicles that provide child care transportation for the child care agency, including vehicles owned or operated by the child care agency, its contractor(s) and volunteer(s), unless specifically exempted by the provisions of subparagraph (f) below.

(f) Exceptions to Vehicle Identification Requirements.

1. Vehicles used exclusively for the provision of occasional field trips;
2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle;
3. The Department may, on a case by case basis, determine if exceptions to this requirement may be made for agencies owned, operated or under the direction or control of a public agency. For purposes of this subparagraph, a “public agency” is any entity owned, operated by, or under the direction or control of a state, county or local entity, or a political subdivision of the State of Tennessee.

(5) Management Responsibility and Required Verification of Children’s Transportation Status.

(a) Management Responsibility.

1. Agencies providing transportation services must additionally provide to the Department a written statement describing:
 - (i) The type(s) of transportation that will be offered, e.g., from the child’s home to the child care agency, from the child care agency to the child’s school, etc.;
 - (ii) The types of vehicles that will be used for the transportation of children, e.g. a 1999 fifteen passenger Ford van;
 - (iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;
 - (iv) The provider’s plan for maintaining compliance with the transportation time limits set forth in 1240-4-1-.07(9);
 - (v) The provider’s policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-4-1-.07(5)(b);
 - (vi) The provider’s policy and procedures for obtaining and maintaining compliance with state child safety restraint laws set forth in Tennessee Code Annotated, Title 55, Chapter 9, Part 6; and
 - (vii) The provider’s policy and procedures for the emergency evacuation of the vehicle.

2. If a group child care home provides transportation, its management shall be fully responsible for the transportation of children between home and the group daycare home, to or from school, and on field trips, if provided by the agency, on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
 3. Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the childcare agency shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-1-.02(8).
- (b) Verification Procedures.
1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", and who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the group child care home to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.
 2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.
 3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.
 4. Immediately, upon unloading the last child/children from the vehicle and to ensure that all the children being transported have been unloaded, the driver shall immediately:
 - (i) review the passenger log to confirm the status of each child and, if the driver is the sole caregiver, reconcile the passenger log with the children's attendance records;
 - (ii) physically walk through the vehicle; and
 - (iii) inspect all seat surfaces, under all seats and any and all compartments or recesses in the vehicle's interior.
 5. Additional caregiver review and verification requirements.
 - (i) In instances when the driver in part 4 is working under the direction or control of the group child care home, but is not the sole caregiver, or when more than one caregiver is required, then, when unloading children at the group child care home or during field trips, or when, prior to being parked at the group child care home or other location, and to ensure that all children have been unloaded, the group child care home shall designate a caregiver other than the person responsible for recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and have been properly accounted for.

- (ii) The caregiver who has, if required, been designated in subpart 5(i), shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately comply with part(1)(b)4.
 - (iii) Verification of the passenger logs and attendance records required by this part shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the group child care home for an annual license, whichever is first.
- 6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.
- 7. When children are transported to school, they shall be released in accordance with the following procedures:
 - (i) the children shall be unloaded only at the location designated by the school;
 - (ii) the children are only allowed to unload from the group child care home's vehicle at the time the school is open to receive them; and
 - (iii) the driver/ caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children and
 - (iv) any additional procedures established by the school.
- (6) Transportation Staff Qualifications.
 - (a) Effective January 1, 2003, all persons driving vehicles at any time for the transportation of children enrolled in the child care agency, shall hold a current Tennessee commercial driver's license if the person drives a vehicle that is designed to carry ten (10) or more persons. If the person does not drive such a vehicle to transport children in the care of the group child care home, the person shall hold a valid Tennessee drivers license.
 - (b) Effective January 1, 2003 all persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall provide, annually, a health statement, based upon an examination of the individual, signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.
 - (c) Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:
 - 1. The proper daily safety inspection of the vehicle set forth in subparagraph (3)(b) above;
 - 2. The proper use of child safety restraints set forth in paragraph (7) and Tennessee Code Annotated, Title 55, Chapter 9, Part 6;
 - 3. The proper use of the verification procedures set forth in paragraph (5);

4. The proper use of a blood borne pathogen kit;
 5. The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
 6. The developmentally appropriate practices applicable to the behavior management of children during transportation.
- (d) Following the completion of pre-service transportation training, all persons responsible, at any time for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-4-1-.07(6)(c), above, a minimum of every six (6) months.
- (e) Effective January 1, 2003, all persons responsible, or who may in the course of their duties become responsible, at any time, for the transportation of children shall hold current certification in Infant/ Pediatric CPR from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department.
- (f) The requirements of 1240-4-1-.07(6) do not apply to individuals who provide transportation services exclusively for occasional field trips.
- (7) Child Safety Restraints.
- (a) Children under four (4) years of age shall never be placed in the front seat of the vehicle.
 - (b) Children under thirteen (13) months of age shall be placed to face the rear of the vehicle. Children thirteen (13) months of age or older shall be placed to face the front of the vehicle unless the child weighs less than twenty pounds (20 lbs.), or the special needs of a disabled child otherwise require the child to face the rear of the vehicle.
 - (c) Children under four (4) years of age who weigh less than forty pounds (40 lbs.) shall be restrained in accordance with the car seat manufacturer's instructions in a federally-approved car seat which is secured in accordance with the manufacturer's instructions.
 - (d) Children between the ages of four (4) years and eight (8) years who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be used with both a lap belt and a shoulder belt.
 - (e) Children weighing more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained with both an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.
 - (f) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
 - (g) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.
- (8) Supervision of Children During Transportation.

- (a) An adult must be in the vehicle whenever a child is in the vehicle.
 - (b) An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, not in kindergarten, if the vehicle is designed to hold seven (7) or more persons.
 - (c) An adult monitor in addition to the driver is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.
 - (d) An adult monitor in addition to the driver is required on the vehicle for all routes exceeding thirty (30) minutes.
- (9) Limits on Time Children Are Transported/Transportation Waivers.
- (a) Children shall not spend more than thirty (30) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 - (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

Chapter 1240-4-1, Standards for Group Day Care Homes, is amended by changing any existing internal rule references in the Chapter made necessary as a result of the preceding amendments, so that, as amended, all rule citations in the Chapter shall reference the correct rule.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-34)

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 new rules pursuant to TCA §§ 71-3-501 et seq. The hearings 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 Second Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Monday, September 16, 2002; in Conference Room A, 7th Floor, State Office Building, at 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Time on Tuesday, September 17, 2002; and in the Second Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Time on Wednesday, September 18, 2002

Any individuals with disabilities who wish to participate in these proceedings or 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 or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Fran McKinney Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563, (TTY)- (800) 270-1349.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1240-4-3 STANDARDS FOR CHILD CARE CENTERS SERVING PRE-SCHOOL CHILDREN

AMENDMENTS

Paragraph (8) of subchapter 1240-4-3-.06, Organization and Administration, is amended by deleting paragraph (8) in its entirety.

Authority: *T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).*

Chapter 1240-4-3, Standards for Child Care Centers Serving Pre-School Children, is amended by adding the following new subchapter 1240-4-3-.10, Transportation, and by re-designating the existing subchapter 1240-4-3-.10 as subchapter 1240-4-3-.11 and all remaining subchapters and the Table of Contents accordingly:

1240-4-3-.10 TRANSPORTATION.

- (1) Management Responsibility, Required Verification of Children's Transportation Status and Transportation Training Requirements.
 - (a) Management Responsibility.
 1. Existing child care agencies, or those applying or re-applying for licenses, providing transportation services, must additionally provide a written statement to the Department describing:
 - (i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;
 - (ii) The types of vehicles that will be used for the transportation of children, e.g., a 1999 fifteen passenger Ford van;
 - (iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;
 - (iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-4-3-.10(9);
 - (v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-4-3-.10(1)(b);

- (vi) The provider's policy and procedures for obtaining and maintaining compliance with state child safety restraint laws set forth in Tennessee Code Annotated, Title 55, Chapter 9, Part 6; and
 - (vii) The provider's policy and procedures for the emergency evacuation of the vehicle.
 - 2. If a child care center provides transportation, its management shall be fully responsible for the transportation of children between home and the child care center, to or from school, and on field trips, if provided by the agency, on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
 - 3. Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the childcare agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-3-.06(3).
- (b) Verification Procedures.
- 1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", and who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the child care center to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.
 - 2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.
 - 3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.
 - 4. Immediately, upon unloading the last child/children from the vehicle and to ensure that all the children being transported have been unloaded, the driver and any other staff members riding on the vehicle shall immediately deliver the passenger log to the person designated by the child care center in subpart (v) and shall immediately:
 - (i) physically walk through the vehicle; and
 - (ii) inspect all seat surfaces, under all seats and any and all compartments or recesses in the vehicle's interior.
 - 5. Additional caregiver/staff review and verification requirements.
 - (i) The child care center shall also designate a caregiver or management level staff person, other than the person responsible for the recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and properly accounted for.

- (ii) When unloading children at the child care center or field trip destinations, or when, prior to being parked at the child care center or other location, and to ensure that all children have been unloaded, the person designated pursuant to item (I) shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately:
 - (I) reconcile the passenger log with the children's attendance records; and
 - (II) conduct the same inspection as required in item (1)(b)(4)(i) and (ii).
 - (iii) Verification of the passenger logs and attendance records required by this part shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the center for an annual license, whichever is first.
- 6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.
- 7. When children are transported to school, they shall be released in accordance with the following procedures:
 - (i) the children shall be unloaded only at the location designated by the school;
 - (ii) the children are only allowed to unload from the center's vehicle at the time the school is open to receive them;
 - (iii) the driver/ caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and
 - (iv) any additional procedures established by the school.
- (c) Transportation Staff Qualifications.
 - 1. Effective January 1, 2003, all persons driving vehicles at any time for the transportation of children enrolled in the child care agency, shall hold a current Tennessee commercial driver's license.
 - 2. Effective January 1, 2003 all persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall provide, annually, a health statement, based upon an examination of the individual, signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.
 - 3. Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:
 - (i) The proper daily safety inspection of the vehicle set forth in subparagraph (2)(b) below;
 - (ii) The proper use of child safety restraints set forth in paragraph (4) and Tennessee Code Annotated, Title 55, Chapter 9, Part 6;

- (iii) The proper use of the verification procedures set forth in subparagraph (1)(b);
 - (iv) The proper use of a blood borne pathogen kit;
 - (v) The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
 - (vi) The developmentally appropriate practices applicable to the behavior management of children during transportation.
4. Following the completion of pre-service transportation training, all persons responsible at any time, for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-4-3-.10(1)(c) 3., above, a minimum of every six (6) months.
 5. Effective January 1, 2003 all persons responsible, or who may in the course of their duties become responsible, for the transportation of children shall hold current certification in Infant/Pediatric CPR from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department.
 6. The requirements of 1240-4-3-.10(1)(c) do not apply to individuals who provide transportation services exclusively for occasional field trips.

(2) Vehicle Requirements.

- (a) The child care agency shall maintain documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer.
 1. The requirements of this part include vehicles used at anytime for the regular child care vehicle(s).
 2. Exception: the requirements of this part do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.
- (b) The child care agency shall maintain documentation that designated child care staff perform daily a visual safety inspection of the vehicle, including an inspection of all tires for wear and adequate pressure, an inspection for working lights, signals, and wiper blades, and an inspection for properly functioning doors and windows.
- (c) Special requirements for vehicles designed to carry ten (10) to eighteen (18) passengers which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR):
 1. A maximum number of ten (10) individuals, including the driver, all children and all adults, shall be transported in vehicles which are designed to carry ten (10) to eighteen (18) passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR). Exception: The requirements of this part do not apply to vehicles that conform to the Federal Motor Vehicle Safety Standards (FMVSS) designated as applicable to small school buses in 49 Code of Federal Regulations Part 571, or as such Part may be amended.
 2. No individual shall ride, and no cargo, luggage or equipment of any type shall be placed, in the back portion of the vehicle that extends over the rear axle. Exception: The requirements of this part do not apply to vehicles that conform to the Federal Motor Vehicle Safety Standards (FMVSS) designated as

applicable to small school buses in 49 Code of Federal Regulations Part 571, or as such Part may be amended.

- (d) Effective January 1, 2005 all vehicles that the child care agency operates, for which it contracts, or which is otherwise under its direction or control, that are designed to carry ten (10) or more passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR), must conform to all Federal Motor Vehicle Safety Standards (FMVSS) designated as applicable to small school buses in 49 Code of Federal Regulations Part 571, or as such Part may be amended. Exception: The requirements of this subparagraph do not apply to vehicles used exclusively for the provision of occasional field trips.

(3) Vehicle Identification.

- (a) The requirements of this paragraph are effective October 1, 2002.
- (b) All vehicles used for the transportation of children enrolled in the child care agency that are operated by the agency, or for which it contracts, or which is otherwise under the direction or control of the agency must, as determined by the Department, clearly and readily identify to the driving public that the vehicle is used for the transportation of child care children by displaying, on both sides of the vehicle and on the rear of the vehicle, the following information:
 - 1. The full name of the child cares agency. If the name of the child care agency does not clearly designate the agency as a child care agency the words "Child Care" must be added to the name displayed on the vehicle;
 - 2. An emergency contact phone number for the child care agency; and
 - 3. The words "Child Care Complaint Hotline" followed by the Department of Human Services toll-free Child Care Complaint Hotline phone number.
- (c) The information required in this part must be applied to the vehicle, in clearly contrasting colors, using standard colors to be determined by the Department, and using letters which are at least three (3) inches high and two (2) inches wide, in one of the following formats:
 - 1. Painted directly on the vehicle in accordance with the manufacturer's instructions using paint recommended by the manufacturer as appropriate for use on a vehicle; or
 - 2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless certified by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.
- (d) Special Requirements for Centralized Transportation.
 - 1. Agencies which may own or operate more than one child care agency and which may provide centralized transportation services; and/or
 - 2. Contractors which may provide centralized transportation services to more than one child care agency

may substitute for the name and phone number of the child care agency required by parts 1240-4-3-.10(3)(b)1. and 2. above the full name and emergency contact number of the centralized operator. If the name of the centralized operator or contractor does not clearly designate the agency or entity as an

agency or entity providing child care transportation, the words “Child Care” must be added to the name displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

- (e) The requirements of this section apply to all vehicles that provide child care transportation for the child care agency, including vehicles owned or operated by the child care agency, its contractor(s) and volunteer(s), unless specifically exempted by the provisions of subparagraph (f) below.
 - (f) Exceptions to Vehicle Identification Requirements.
 - 1. (i) Vehicles used exclusively for the provision of occasional field trips;
 - (ii) Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle;
 - (iii) The Department may, on a case by case basis, determine if exceptions to this requirement may be made for agencies owned, operated, or under the direction or control of a public agency. For purposes of this subparagraph, a “public agency” is any entity controlled, owned or operated by a state, county or local entity, or a political subdivision of the State of Tennessee.
- (4) Child Safety Restraints.
- (a) Children under four (4) years of age shall never be placed in the front seat of the vehicle.
 - (b) Children under thirteen (13) months of age shall be placed to face the rear of the vehicle. Children thirteen (13) months of age or older shall be placed to face the front of the vehicle unless the child weighs less than twenty pounds (20 lbs.), or the special needs of a disabled child otherwise require the child to face the rear of the vehicle.
 - (c) Children under four (4) years of age who weigh less than forty pounds (40 lbs.) shall be restrained in accordance with the car seat manufacturer’s instructions in a Federally-approved car seat which is secured in accordance with the car seat manufacturer’s instructions.
 - (d) Children between the ages of four (4) years and eight (8) years who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer’s instructions. BPBS devices shall always be used with both a lap belt and a shoulder belt.
 - (e) Children weighing more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4’9”) shall be restrained with both an adult lap belt and shoulder belt in accordance with the vehicle manufacturer’s instructions.
 - (f) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
 - (g) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.
- (5) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.

- (6) Storage of firearms is prohibited in vehicles used to transport children.
- (7) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.
- (8) Supervision of Children During Transportation.
 - (a) An adult must be in the vehicle whenever a child is in the vehicle.
 - (b) An adult monitor in addition to the driver is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten.
 - (c) An adult monitor in addition to the driver is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.
 - (d) An adult monitor in addition to the driver is required on the vehicle for all routes exceeding thirty (30) minutes.
- (9) Limits on Time Children Are Transported/Transportation Waivers.
 - (a) Children shall not spend more than thirty (30) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 - (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

Chapter 1240-4-3, Licensure Rules for Child Care Centers Serving Pre-School Children, is amended by changing any existing internal rule references in the Chapter made necessary as a result of the preceding amendments, so that, as amended, all rule citations in the Chapter shall reference the correct rule.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-35)

**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 new rules pursuant to TCA §§ 71-3-501 et seq. The hearings 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 Second Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Monday, September 16, 2002; in Conference Room A, 7th Floor, State Office Building; at 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Time on Tuesday, September 17, 2002; and in the Second Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Time on Wednesday, September 18, 2002

Any individuals with disabilities who wish to participate in these proceedings or 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 or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Fran McKinney Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563, (TTY)- (800) 270-1349.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1240-4-4
STANDARDS FOR FAMILY CHILD CARE HOMES**

AMENDMENTS

Paragraph (7) of subchapter 1240-4-4-.02, Ownership and Administration, is amended by deleting paragraph (7) in its entirety and by re-designating existing paragraph (8) as paragraph (7).

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

Chapter 1240-4-4, Standards for Family Child Care Homes, is amended by adding the following new subchapter 1240-4-4-.07, Transportation, and by re-designating the existing subchapter 1240-4-4-.07, Food, as subchapter 1240-4-4-.08, Food, and by re-designating all remaining subchapters and the Table of Contents accordingly:

1240-4-4-.07 TRANSPORTATION.

- (1) On field trips (whether on foot or in a vehicle), an additional caregiver, in addition to any monitor required by paragraph (8), shall be present to help with supervision.
- (2) Storage of firearms shall be prohibited in vehicles used to transport children.
- (3) Vehicle Requirements.
 - (a) The child care agency shall maintain documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer.

1. The requirements of this part include vehicles used at anytime for the regular child care vehicle(s).
 2. Exception: the requirements of this part do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.
- (b) The child care agency shall maintain documentation that designated child care staff perform daily a visual safety inspection of the vehicle, including an inspection of all tires for wear and adequate pressure, an inspection for working lights, signals, and wiper blades, and an inspection for properly functioning doors and windows.
- (c) Special requirements for vehicles designed to carry ten (10) to eighteen (18) passengers which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR):
1. A maximum number of ten (10) individuals, including the driver, all children and all adults, shall be transported in vehicles which are designed to carry ten (10) to eighteen (18) passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR). Exception: The requirements of this part do not apply to vehicles designated as applicable to small school buses that conform to the Federal Motor Vehicle Safety Standards (FMVSS) in 49 Code of Federal Regulations Part 571, or as it may be amended.
 2. No individual shall ride, and no cargo, luggage or equipment of any type shall be placed, in the back portion of the vehicle that extends over the rear axle. Exception: The requirements of this part do not apply to vehicles designated as applicable to small school buses that conform to the Federal Motor Vehicle Safety Standards (FMVSS) in 49 Code of Federal Regulations Part 571, or as it may be amended.
- (d) Effective January 1, 2005 all vehicles that the child care agency operates, for which it contracts, or which is otherwise under its direction or control, that are designed to carry ten (10) or more passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR), must conform to all Federal Motor Vehicle Safety Standards (FMVSS) designated as applicable to small school buses in 49 Code of Federal Regulations Part 571, or as it may be amended. Exception: The requirements of this part do not apply to vehicles used exclusively for the provision of occasional field trips.
- (4) Vehicle Identification.
- (a) The requirements of this paragraph are effective October 1, 2002.
- (b) All vehicles used for the transportation of children enrolled in the child care agency that are operated by the agency, or for which it contracts, or which is otherwise under the direction or control of the agency must, as determined by the Department clearly and readily identify to the driving public that the vehicle is used for the transportation of child care children by displaying, on both sides of the vehicle and on the rear of the vehicle, the following information:
1. The full name of the child care agency. If the name of the child care agency does not clearly designate the agency as a child care agency the words "Child Care" must be added to the name displayed on the vehicle;
 2. An emergency contact phone number for the child care agency; and
 3. The words "Child Care Complaint Hotline" followed by the Department of Human Services toll-free Child Care Complaint Hotline phone number.

- (c) The information required in this part must be applied to the vehicle, in clearly contrasting colors, using standard colors to be determined by the Department, and using letters which are at least three (3) inches high and two (2) inches wide, in one of the following manners:
 - 1. Painted directly on the vehicle in accordance with the manufacturer's instructions using paint recommended by the manufacturer as appropriate for use on a vehicle; or
 - 2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless certified by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.
- (d) Special Requirements for Centralized Transportation.
 - 1. Agencies which may own or operate more than one child care agency and which may provide centralized transportation services ; and/or
 - 2. Contractors which may provide centralized transportation services to more than one child care agency may substitute for the name and phone number of the child care agency required by paragraph 1240-4-4-.07(4)(b)1. and 2. above the full name and emergency contact number of the centralized operator or contractor. If the name of the centralized operator or contractor does not clearly designate the agency or entity as an agency or entity providing child care transportation, the words "Child Care" must be added to the name displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.
- (e) The requirements of this section apply to all vehicles that provide child care transportation for the child care agency, including vehicles owned or operated by the child care agency, its contractor(s) and volunteer(s), unless specifically exempted by the provisions of subparagraph (f) below.
- (f) Exceptions to Vehicle Identification Requirements.
 - 1. Vehicles used exclusively for the provision of occasional field trips;
 - 2. Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle;
 - 3. The Department may, on a case by case basis, determine if exceptions to this requirement may be made for agencies owned, operated or under the direction or control of a public agency. For purposes of this subparagraph, a "public agency" is any entity owned, operated by, or under the direction or control of a state, county or local entity, or a political subdivision of the State of Tennessee.
- (5) Management Responsibility and Required Verification of Children's Transportation Status.
 - (a) Management Responsibility.
 - 1. Agencies providing transportation services must additionally provide to the Department a written statement describing:
 - (i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;

- (ii) The types of vehicles that will be used for the transportation of children, e.g. a 1999 fifteen passenger Ford van;
 - (iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;
 - (iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-4-4-.07(9);
 - (v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-4-4-.07(5)(b);
 - (vi) The provider's policy and procedures for obtaining and maintaining compliance with state child safety restraint laws set forth in Tennessee Code Annotated, Title 55, Chapter 9, Part 6; and
 - (vii) The provider's policy and procedures for the emergency evacuation of the vehicle.
2. If a family child care home provides transportation, its management shall be fully responsible for the transportation of children between home and the family daycare home, to or from school, and on field trips, if provided by the agency, on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
3. Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the childcare agency shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-4-.02(8).
- (b) Verification Procedures.
- 1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", and who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the family child care home to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.
 - 2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.
 - 3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.
 - 4. Immediately, upon unloading the last child/children from the vehicle and to ensure that all the children being transported have been unloaded, the driver shall immediately:
 - (i) review the passenger log to confirm the status of each child and, if the driver is the sole caregiver, reconcile the passenger log with the children's attendance records;

- (ii) physically walk through the vehicle; and
- (iii) inspect all seat surfaces, under all seats and any and all compartments or recesses in the vehicle's interior.

5. Additional caregiver review and verification requirements.

- (i) In instances when the driver in part 4 is working under the direction or control of the family child care home, but is not the sole caregiver, or when more than one caregiver is required, then, when unloading children at the family child care home or during field trips, or when, prior to being parked at the family child care home or other location, and to ensure that all children have been unloaded, the family child care home shall designate a caregiver other than the person responsible for recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and have been properly accounted for.
- (ii) The caregiver who has, if required, been designated in subpart 5(i), shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately comply with part(1)(b)4.
- (iii) Verification of the passenger logs and attendance records required by this part shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the family child care home for an annual license, whichever is first.

6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.

7. When children are transported to school, they shall be released in accordance with the following procedures:

- (i) the children shall be unloaded only at the location designated by the school;
- (ii) the children are only allowed to unload from the family child care home's vehicle at the time the school is open to receive them; and
- (iii) the driver/ caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children and
- (iv) any additional procedures established by the school.

(6) Transportation Staff Qualifications.

- (a) Effective January 1, 2003, all persons driving vehicles at any time for the transportation of children enrolled in the child care agency, shall hold a current Tennessee commercial driver's license if the person drives a vehicle that is designed to carry ten (10) or more persons. If the person does not drive such a vehicle to transport children in the care of the family child care home, the person shall hold a valid Tennessee drivers license.

- (b) Effective January 1, 2003 all persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall provide, annually, a health statement, based upon an examination of the individual, signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.
 - (c) Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:
 - 1. The proper daily safety inspection of the vehicle set forth in subparagraph (3)(b) above;
 - 2. The proper use of child safety restraints set forth in paragraph (7) and Tennessee Code Annotated, Title 55, Chapter 9, Part 6;
 - 3. The proper use of the verification procedures set forth in paragraph (5);
 - 4. The proper use of a blood borne pathogen kit;
 - 5. The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
 - 6. The developmentally appropriate practices applicable to the behavior management of children during transportation.
 - (d) Following the completion of pre-service transportation training, all persons responsible, at any time for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-4-4-.07(6)(c), above, a minimum of every six (6) months.
 - (e) Effective January 1, 2003, all persons responsible, or who may in the course of their duties become responsible, at any time, for the transportation of children shall hold current certification in Infant/Pediatric CPR from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department.
 - (f) The requirements of 1240-4-4-.07(6) do not apply to individuals who provide transportation services exclusively for occasional field trips.
- (7) Child Safety Restraints.
- (a) Children under four (4) years of age shall never be placed in the front seat of the vehicle.
 - (b) Children under thirteen (13) months of age shall be placed to face the rear of the vehicle. Children thirteen (13) months of age or older shall be placed to face the front of the vehicle unless the child weighs less than twenty pounds (20 lbs.), or the special needs of a disabled child otherwise require the child to face the rear of the vehicle.
 - (c) Children under four (4) years of age who weigh less than forty pounds (40 lbs.) shall be restrained in accordance with the car seat manufacturer's instructions in a federally-approved car seat which is secured in accordance with the manufacturer's instructions.

- (d) Children between the ages of four (4) years and eight (8) years who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be used with both a lap belt and a shoulder belt.
 - (e) Children weighing more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained with both an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.
 - (f) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
 - (g) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.
- (8) Supervision of Children During Transportation.
- (a) An adult must be in the vehicle whenever a child is in the vehicle.
 - (b) An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, not in kindergarten, if the vehicle is designed to hold seven (7) or more persons.
 - (c) An adult monitor in addition to the driver is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.
 - (d) An adult monitor in addition to the driver is required on the vehicle for all routes exceeding thirty (30) minutes.
- (9) Limits on Time Children Are Transported/Transportation Waivers.
- (a) Children shall not spend more than sixty (60) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 - (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

Chapter 1240-4-4, Standards for Family Day Care Homes, is amended by changing any existing internal rule references in the Chapter made necessary as a result of the preceding amendments, so that, as amended, all rule citations in the Chapter shall reference the correct rule.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-36)

**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 new rules pursuant to TCA §§ 71-3-501 et seq. The hearings 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 Second Floor Auditorium, State Office Building, 170 North Main Street, Memphis, Tennessee 38103 at 6:30PM Central Time on Monday, September 16, 2002; in Conference Room A, 7th Floor, State Office Building, at 531 Henley Street, Knoxville, Tennessee 37902 at 6:30 PM Eastern Time on Tuesday, September 17, 2002; and in the Second Floor Conference Room, Citizen's Plaza Building 400 Deaderick Street, Nashville, Tennessee 37248 at 6:30 PM Central Time on Wednesday, September 18, 2002

Any individuals with disabilities who wish to participate in these proceedings or 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 or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services ADA Coordinator, Fran McKinney Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563, (TTY)- (800) 270-1349.

For a copy of this notice of rulemaking hearing, contact: William B. Russell, Citizen's Plaza Building, 400 Deaderick Street, Nashville, Tennessee, 37248-0006 and (615) 313-4731.

SUBSTANCE OF PROPOSED RULES

**CHAPTER 1240-4-6
STANDARDS FOR CHILD CARE CENTERS –SCHOOL-AGE CHILDREN**

AMENDMENTS

Paragraph (8) of subchapter 1240-4-6-.06, Organization and Administration, is amended by deleting paragraph (8) in its entirety.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

Chapter 1240-4-6, Standards for Child Care Centers Serving School-Age Children, is amended by adding the following new subchapter 1240-4-6-.10, Transportation, and by re-designating the existing subchapter 1240-4-6-.10 as subchapter 1240-4-6-.11 and all remaining subchapters and the Table of Contents accordingly:

1240-4-6-.10 TRANSPORTATION.

- (1) Management Responsibility, Required Verification of Children's Transportation Status and Transportation Training Requirements.
 - (a) Management Responsibility.
 - 1. Existing child care agencies, or those applying or re-applying for licenses, providing transportation services, must additionally provide a written statement to the Department describing:
 - (i) The type(s) of transportation that will be offered, e.g., from the child's home to the child care agency, from the child care agency to the child's school, etc.;

- (ii) The types of vehicles that will be used for the transportation of children, e.g., a 1999 fifteen passenger Ford van;
 - (iii) Any contracts, agreements or arrangements with any third parties for the provision of transportation services;
 - (iv) The provider's plan for maintaining compliance with the transportation time limits set forth in 1240-4-6-.10(9);
 - (v) The provider's policy and procedures for maintaining compliance with the transportation verification procedures set forth in 1240-4-6-.10(1)(b);
 - (vi) The provider's policy and procedures for obtaining and maintaining compliance with state child safety restraint laws set forth in Tennessee Code Annotated, Title 55, Chapter 9, Part 6; and
 - (vii) The provider's policy and procedures for the emergency evacuation of the vehicle.
2. If a child care center provides transportation, its management shall be fully responsible for the transportation of children between home and the child care center, to or from school, and on field trips, if provided by the agency, on any vehicle which it operates, for which it contracts or which is otherwise under its direction or control.
 3. Vehicles used to transport children and which are owned or operated by, contracted by or which are otherwise under the direction and control of the childcare agency, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by Rule 1240-4-6-.06(3).
- (b) Verification Procedures.
1. The driver of the vehicle or any other designated staff person riding on the vehicle shall use a passenger log to record the name of each individual child received for transport as the child enters the vehicle. No child shall be accounted for by use of a single entry in the log that would include all, or part, of a group of other siblings or relatives with the same last name and with whom the child is being transported. For example, three (3) siblings with the same last name, e.g., "Doe", and who are transported on the same vehicle shall not be recorded by the single entry "Doe" which only records the group's last name and is used by the child care center to signify that all three (3) "Doe" children are accounted for. Each child shall, instead, be separately listed by first and last name.
 2. During transportation, the passenger log shall be used to take roll each time the vehicle makes a stop as each child is loaded or unloaded.
 3. Whenever children being transported are released from the vehicle to their parent or other designated person, the passenger log shall immediately be updated to reflect which children have been released.
 4. Immediately, upon unloading the last child/children from the vehicle and to ensure that all the children being transported have been unloaded, the driver and any other staff members riding on the vehicle shall immediately deliver the passenger log to the person designated by the child care center in subpart (v) and shall immediately:
 - (i) physically walk through the vehicle; and

- (ii) inspect all seat surfaces, under all seats and any and all compartments or recesses in the vehicle's interior.
- 5. Additional caregiver/staff review and verification requirements.
 - (i) The child care center shall also designate a caregiver or management level staff person, other than the person responsible for the recording in the passenger log on the vehicle, who shall provide additional review and additional verification that the children have been unloaded from the vehicle and properly accounted for.
 - (ii) When unloading children at the child care center or field trip destinations, or when, prior to being parked at the child care center or other location, and to ensure that all children have been unloaded, the person designated pursuant to item (I) shall also immediately request the passenger log from the person on the vehicle responsible for maintaining the log and shall immediately:
 - (I) reconcile the passenger log with the children's attendance records; and
 - (II) conduct the same inspection as required in item (1)(b)(4)(i) and (ii).
 - (iii) Verification of the passenger logs and attendance records required by this part shall be made by having the printed name of the persons who complete the logs and records written or printed on the passenger log and attendance record accompanied by the handwritten initials of such persons. Passenger logs and attendance records shall be maintained for a period of one (1) year or until the next re-evaluation of the center for an annual license, whichever is first.
- 6. The driver or any accompanying staff member shall assure that every child is received by a parent or other designated person.
- 7. When children are transported to school, they shall be released in accordance with the following procedures:
 - (i) the children shall be unloaded only at the location designated by the school;
 - (ii) the children are only allowed to unload from the center's vehicle at the time the school is open to receive them;
 - (iii) the driver/ caregiver shall watch the children who are unloaded from the vehicle walk through the entrance door designated by the school for the children; and
 - (iv) any additional procedures established by the school.
- (c) Transportation Staff Qualifications.
 - 1. Effective January 1, 2003, all persons driving vehicles at any time for the transportation of children enrolled in the child care agency, shall hold a current Tennessee commercial driver's license.
 - 2. Effective January 1, 2003 all persons driving vehicles at any time for the transportation of children enrolled in the child care agency shall provide, annually, a health statement, based upon an examination of the individual, signed by the examining licensed physician, licensed psychologist, licensed clinician, Nurse Practitioner, or Physician's Assistant verifying that the individual is physically, mentally and emotionally capable in all respects of safely and appropriately providing transportation for children.

3. Prior to assuming their duties, all persons responsible, or who may in the course of their duties become responsible, at any time, for transporting children (including drivers and monitors) shall complete Department of Human Services-recognized pre-service transportation training in:
 - (i) The proper daily safety inspection of the vehicle set forth in subparagraph (2)(b) below;
 - (ii) The proper use of child safety restraints set forth in paragraph (4) and Tennessee Code Annotated, Title 55, Chapter 9, Part 6;
 - (iii) The proper use of the verification procedures set forth in subparagraph (1)(b);
 - (iv) The proper use of a blood borne pathogen kit;
 - (v) The proper procedures for the evacuation of the vehicle based upon the type of vehicle and the ages of the children served; and
 - (vi) The developmentally appropriate practices applicable to the behavior management of children during transportation.
4. Following the completion of pre-service transportation training, all persons responsible at any time, for the transportation of children (including drivers and monitors), shall complete Department of Human Services-recognized transportation training that includes the subject matter set forth in 1240-4-6-.10(1)(c) 3., above, a minimum of every six (6) months.
5. Effective January 1, 2003 all persons responsible, or who may in the course of their duties become responsible, at any time, for the transportation of children shall hold current certification in Infant/Pediatric CPR from the American Red Cross, the American Heart Association, or other certifying organization as recognized by the Department.
6. The requirements of 1240-4-6-.10(1)(c) do not apply to individuals who provide transportation services exclusively for occasional field trips.

(2) Vehicle Requirements.

- (a) The child care agency shall maintain documentation that the vehicles used to transport children receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer.
 1. The requirements of this part include vehicles used at anytime for the regular child care vehicle(s).
 2. Exception: the requirements of this part do not apply to vehicles operated solely for the purpose of providing transportation for occasional field trips.
- (b) The child care agency shall maintain documentation that designated child care staff perform daily a visual safety inspection of the vehicle, including an inspection of all tires for wear and adequate pressure, an inspection for working lights, signals, and wiper blades, and an inspection for properly functioning doors and windows.
- (c) Special requirements for vehicles designed to carry ten (10) to eighteen (18) passengers which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR):

1. A maximum number of ten (10) individuals, including the driver, all children and all adults, shall be transported in vehicles which are designed to carry ten (10) to eighteen (18) passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR). Exception: The requirements of this part do not apply to vehicles that conform to the Federal Motor Vehicle Safety Standards (FMVSS) designated as applicable to small school buses in 49 Code of Federal Regulations Part 571, or as such Part may be amended.
 2. No individual shall ride, and no cargo, luggage or equipment of any type shall be placed, in the back portion of the vehicle that extends over the rear axle. Exception: The requirements of this part do not apply to vehicles that conform to the Federal Motor Vehicle Safety Standards (FMVSS) designated as applicable to small school buses in 49 Code of Federal Regulations Part 571, or as such Part may be amended.
- (d) Effective January 1, 2005 all vehicles that the child care agency operates, for which it contracts, or which is otherwise under its direction or control, that are designed to carry ten (10) or more passengers but which weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR), must conform to all Federal Motor Vehicle Safety Standards (FMVSS) designated as applicable to small school buses in 49 Code of Federal Regulations Part 571, or as such Part may be amended. Exception: The requirements of this subparagraph do not apply to vehicles used exclusively for the provision of occasional field trips.
- (3) Vehicle Identification.
- (a) The requirements of this paragraph are effective October 1, 2002.
 - (b) All vehicles used for the transportation of children enrolled in the child care agency that are operated by the agency, or for which it contracts, or which is otherwise under the direction or control of the agency must, as determined by the Department, clearly and readily identify to the driving public that the vehicle is used for the transportation of child care children by displaying, on both sides of the vehicle and on the rear of the vehicle, the following information:
 1. The full name of the child cares agency. If the name of the child care agency does not clearly designate the agency as a child care agency the words "Child Care" must be added to the name displayed on the vehicle;
 2. An emergency contact phone number for the child care agency; and
 3. The words "Child Care Complaint Hotline" followed by the Department of Human Services toll-free Child Care Complaint Hotline phone number.
 - (c) The information required in this part must be applied to the vehicle, in clearly contrasting colors, using standard colors to be determined by the Department, and using letters which are at least three (3) inches high and two (2) inches wide, in one of the following formats:
 1. Painted directly on the vehicle in accordance with the manufacturer's instructions using paint recommended by the manufacturer as appropriate for use on a vehicle; or
 2. A weather-resistant sign securely fastened to the vehicle. The term "securely fastened" includes magnetic signs and signs bolted to the vehicle. The term does not include adhesives such as tape or glue unless certified by the adhesive manufacturer as being appropriate for outdoor use on a vehicle.

(d) Special Requirements for Centralized Transportation.

1. Agencies which may own or operate more than one child care agency and which may provide centralized transportation services; and/or
2. Contractors which may provide centralized transportation services to more than one child care agency

may substitute for the name and phone number of the child care agency required by parts 1240-4-6-.10(3)(b)1. and 2. above the full name and emergency contact number of the centralized operator. If the name of the centralized operator or contractor does not clearly designate the agency or entity as an agency or entity providing child care transportation, the words "Child Care" must be added to the name displayed on the vehicle in a manner that demonstrates, as determined by the Department, that the vehicle is providing child care transportation.

(e) The requirements of this section apply to all vehicles that provide child care transportation for the child care agency, including vehicles owned or operated by the child care agency, its contractor(s) and volunteer(s), unless specifically exempted by the provisions of subparagraph (f) below.

(f) Exceptions to Vehicle Identification Requirements.

1. (i) Vehicles used exclusively for the provision of occasional field trips;
- (ii) Vehicles used exclusively for the limited provision of emergency transportation, e.g., as a result of the mechanical breakdown of the regular child care vehicle;
- (iii) The Department may, on a case by case basis, determine if exceptions to this requirement may be made for agencies owned, operated, or under the direction or control of a public agency. For purposes of this subparagraph, a "public agency" is any entity controlled, owned or operated by a state, county or local entity, or a political subdivision of the State of Tennessee.

(4) Child Safety Restraints.

- (a) Children under four (4) years of age shall never be placed in the front seat of the vehicle.
- (b) Children under thirteen (13) months of age shall be placed to face the rear of the vehicle. Children thirteen (13) months of age or older shall be placed to face the front of the vehicle unless the child weighs less than twenty pounds (20 lbs.), or the special needs of a disabled child otherwise require the child to face the rear of the vehicle.
- (c) Children under four (4) years of age who weigh less than forty pounds (40 lbs.) shall be restrained in accordance with the car seat manufacturer's instructions in a Federally-approved car seat which is secured in accordance with the car seat manufacturer's instructions.
- (d) Children between the ages of four (4) years and eight (8) years who weigh between forty pounds (40 lbs.) and eighty pounds (80 lbs.) shall be restrained in a belt-positioning booster seat (BPBS) in accordance with the BPBS manufacturer's instructions. BPBS devices shall always be used with both a lap belt and a shoulder belt.
- (e) Children weighing more than eighty pounds (80 lbs.) or who are taller than four feet nine inches (4'9") shall be restrained with both an adult lap belt and shoulder belt in accordance with the vehicle manufacturer's instructions.

- (f) Passenger air bags shall remain turned off unless an adult or a child fifteen (15) years of age or older is riding in the front passenger seat of the vehicle.
 - (g) No child shall ride on the floor of a vehicle and no child shall be placed with another child in the same restraint device.
- (5) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.
- (6) Storage of firearms is prohibited in vehicles used to transport children.
- (7) A minimum of ten (10) inches seat space per child is required in a vehicle transporting children.
- (8) Supervision of Children During Transportation.
- (a) An adult must be in the vehicle whenever a child is in the vehicle.
 - (b) An adult monitor in addition to the driver is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks through five (5) years of age, who are not in kindergarten.
 - (c) An adult monitor in addition to the driver is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanent or temporary) of any age.
 - (d) An adult monitor in addition to the driver is required on the vehicle for all routes exceeding thirty (30) minutes.
- (9) Limits on Time Children Are Transported/Transportation Waivers.
- (a) Children shall not spend more than sixty (60) minutes traveling one way; provided, however, this provision is not applicable for occasional field trips.
 - (b) If extended transportation beyond the limits in subparagraph (a) is necessary in special circumstances, or as may be required by geographic factors, an individualized plan shall be established and signed by the parent(s) and the child care agency and approved by the Department prior to providing such transportation.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

Chapter 1240-4-6, Licensure Rules for Child Care Centers Serving School-Age Children, is amended by changing any existing internal rule references in the Chapter made necessary as a result of the preceding amendments, so that, as amended, all rule citations in the Chapter shall reference the correct rule.

Authority: T.C.A. §§4-5-202; 71-1-105(5); 71-3-502(a)(2).

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of July, 2002. (07-37)

BOARD OF MEDICAL EXAMINERS - 0880
COMMITTEE ON PHYSICIAN ASSISTANTS

There will be a hearing before the Tennessee Board of Medical Examiners and its Committee on Physician Assistants to consider the promulgation of an amendment to a rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-19-104, 63-19-107, and Public Chapter 527 of the Public Acts of 2002. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 10th day of October, 2002.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 1st Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

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

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

SUBSTANCE OF PROPOSED RULE

AMENDMENT

Rule 0880-3-.21 Prescription Writing, is amended by deleting paragraphs (1), (2), (3), and (4) in their entirety and substituting instead the following language, and is further amended by renumbering paragraph (5) as paragraph (3), so that as amended, the new paragraphs (1) and (2) shall read:

- (1) Prescription writing shall be governed by T.C.A. § 63-19-107.
- (2) A physician assistant authorized by his or her supervising physician to prescribe drugs shall complete a Notice of Authorization for Prescribing form, including the biographical information and formulary, and submit it to the following addresses:

Committee on Physician Assistants
First Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37247-1010

Tennessee Board of Pharmacy
Davy Crockett Tower
500 James Robertson Parkway, 2nd Floor
Nashville, TN 37243-1149

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-19-104, 63-19-107, and Public Chapter 527 of the Public Acts of 2002.

The notice of rulemaking set out herein was properly filed in the Department of State on the 12th day of July, 2002. (07-07)

WILDLIFE RESOURCES COMMISSION - 1660

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. 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 Holiday Inn, located at 970 South Jefferson Avenue, Cookeville, Tennessee, commencing at 9:00 A.M., local time, on the 26th day of September, 2002.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Carolyn Wilson, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204 and telephone number (615)781-6594.

For a copy of this notice of rulemaking hearing, contact: Sheryl Holtam, Attorney, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, telephone number (615)781-6606.

SUBSTANCE OF PROPOSED RULES**AMENDMENT**

Rule 1660-2-7-.34 Dale Hollow Lake is amended by adding new paragraph (3) which shall read as follows:

- (3) All vessels being operated within approximately sixteen-hundred feet (1600') on the east side (upstream) and eleven-hundred feet (1100') on the west side (downstream) of the Highway 111 bridge, as delineated by a line of informational buoys, shall be operated at a "slow, no wake" speed from May 15 through Labor Day.

Authority: *T.C.A. Sections 70-1-206 and 69-10-209.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 15th day of July, 2002. (07-10)

WILDLIFE PROCLAMATIONS

CORRECTION FOR JULY TENNESSEE ADMINISTRATIVE REGISTER

Due to a printing error, a line was mistakenly added to TWRA proclamation 02-7 found on page 135 of the July 15 TAR. The line at the bottom of the page should not exclude the November 11, 2002 through November 22, 2002 Deer (archery) season in Unit B of white-tailed deer. The Secretary of State regrets the error.



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning July 1, 2002 and ending July 31, 2002.

A handwritten signature in black ink that reads "Riley C. Darnell". The signature is written in a cursive style with a large, stylized "R" and "D".

RILEY C. DARNELL
Secretary of State

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