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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Board of Nursing
Division:	
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1000-05	Medication Aides Certified
Rule Number	Rule Title
1000-05-.01	Purpose
1000-05-.02	Definitions
1000-05-.03	Application, Certification and Renewal
1000-05-.04	Reinstatement
1000-05-.05	Fees
1000-05-.06	Disciplinary Actions and Civil Penalties
1000-05-.07	Training Programs
1000-05-.08	Peer Assistance Program
1000-05-.09	Continuing Education
1000-05-.10	Supervision and Delegation
1000-05-.11	Standards of Practice

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1000-05
Medication Aides Certified

New Rules

1000-05-.01	Purpose.
1000-05-.02	Definitions.
1000-05-.03	Application, Certification and Renewal.
1000-05-.04	Reinstatement.
1000-05-.05	Fees.
1000-05-.06	Disciplinary Actions and Civil Penalties.
1000-05-.07	Training Programs.
1000-05-.08	Peer Assistance Program.
1000-05-.09	Continuing Education.
1000-05-.10	Supervision and Delegation.
1000-05-.11	Standards of Practice.

1000-05-.01 Purpose.

The rules in this chapter implement the certification program for medication aides certified, T.C.A. § 63-7-127.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.02 Definitions.

In addition to the definitions contained in T.C.A. § 63-7-127(a), the following definitions are applicable to this chapter:

- (1) "Applicant" means a person filing an application for a certificate as a MAC.
- (2) "As Needed Medication" means any oral or topical medication for a specified condition that is not scheduled to be administered to a resident at a routine time but is given in response to a resident's complaint or expression of discomfort.
- (3) "Assisted Care Living Facility" shall have the same meaning as set forth in T.C.A. § 68-11-201.
- (4) "Board" means the Tennessee Board of Nursing.
- (5) "Certified Nurse Aide" means an individual who has successfully completed an approved nursing assistant training program and is registered with the department.
- (6) "Clinical Practice Component" means tasks or activities planned as part of a medication aide certified training program to provide MAC students with the opportunity to administer medications in a nursing home or an assisted care living facility setting.
- (7) "Clock Hour or Contact Hour" means fifty (50) to sixty (60) minutes of qualifying or continuing education.
- (8) "Controlled Substances" shall have the same meaning as set forth in T.C.A. § 63-10-204(7).
- (9) "Delegation" means the transfer of responsibility, but not the accountability, for the administration of medication from the delegating licensed nurse to a MAC.
- (10) "Department" means the Tennessee Department of Health.
- (11) "Drug" shall have the same meaning as set forth in T.C.A. § 63-10-204(16).

- (12) "Licensed Nurse" means a registered nurse or licensed practical nurse licensed under T.C.A. § 63-7-101 et. seq., including an advanced practice nurse.
- (13) "Medication Administration" means giving a drug to a resident to be orally ingested by the resident or topically applied to the resident's body.
- (14) "Medication Administration Record" (MAR) means a written or electronic record of the medication ordered for and administered to a patient or resident of a nursing home or assisted care living facility.
- (15) "Medication Aide Certified" (MAC) means a certified nurse aide who holds a current, valid certificate as a medication aide certified issued by the Board and who administers medications (pursuant to T.C.A. § 63-7-127) under the general supervision of a licensed nurse.
- (16) "Medication Aide Certified Training Program" means a formal program of study approved by the Board and required for certification as a medication aide certified.
- (17) "Nursing Home" shall have the same meaning as set forth in T.C.A. § 68-11-201.
- (18) "Patient" or "Resident" means a person receiving the services of a medication aide certified in a nursing home or assisted care living facility.
- (19) "Peer Support Program" means a program that provides monitoring of rehabilitation services to health care professionals who may be impaired by substance abuse or a psychological condition.
- (20) "Person" is defined as an individual, natural person.
- (21) "PHI" means individually identifiable health information (IHI) created, received, or maintained by a covered entity and transmitted or maintained in any form or medium. 45 C.F.R. Part 160.103; 42 U.S.C. §§ 1320d – 1320d-8 (HIPAA).
- (22) "Qualified Educational Institution" means an institution accredited by the Southern Association of Colleges and Schools (or equivalent regional accredited agency) or the Council on Occupational Education that currently or in the future operates as a fully approved Tennessee School of Registered or Practical Nursing.
- (23) "General Supervision" means a licensed nurse overseeing with authority a MAC who is performing medication administration in a nursing home or assisted care living facility. The delegating licensed nurse shall be on-site and immediately available where required by law. If not required to be on-site, the delegating nurse shall be immediately available for a two-way telephone conversation.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.03 Application, Certification and Renewal.

- (1) Application.
 - (a) An applicant for certification as a MAC shall complete an application on a form prescribed by the Board. The training program shall submit the application for certification by examination to the Board office.
 - (b) Any application submitted which lacks the required information or fails to meet any requirement for certification will be returned to the applicant with written notification of deficiency and will be held in "pending" status for a reasonable period of time, not to exceed ninety (90) days from the date of application, so that the applicant may cure any deficiency, if possible.
 - (c) An application may be withdrawn unless it has been denied.

- (d) Application fees are not refundable.
- (2) Certification.
- (a) An applicant for certification as a MAC shall submit an application to the Board office along with the required information and application and certification fees.
 - (b) An applicant shall furnish evidence to the Board office, along with a completed application and applicable fees, that the applicant:
 - 1. Is at least eighteen (18) years of age;
 - 2. Has completed the twelfth (12th) grade or its equivalent or has successfully passed the test for and has received a general equivalency diploma;
 - 3. Is a certified nurse aide;
 - 4. Has worked as a certified nurse aide in a nursing home or assisted care living facility for at least 365 days of continuous, uninterrupted, full-time work at no more than two (2) different facilities, at the time the applicant submits an application;
 - 5. Has successfully completed a course of instruction provided by a training program approved by the Board under rule 1000-05-.07 and in compliance with T.C.A. § 63-7-127(i);
 - 6. Has passed a medication aide certification examination approved by the Board;
 - 7. Has caused the results of a criminal background check to be submitted to the Board's administrative office directly from one of the vendors identified in the Board's licensure application materials; and
 - 8. Does not have an encumbrance on any professional license or certificate.
 - (c) An applicant must take the approved MAC examination.
 - 1. An applicant must become eligible for certification by examination by applying to the board within thirty (30) days after completing a training program;
 - 2. An applicant must then take the examination within ninety (90) days of being made eligible by the board;
 - 3. An applicant taking the examination a second time must re-take the examination and complete the certification process no later than 365 days after filing the initial application; and
 - 4. An applicant not successful after two (2) examination attempts must repeat the training program and reapply.
- (3) Renewal.
- (a) Certification is valid for two (2) years from the date of its issuance and shall become invalid on such date unless renewed, unless earlier suspended or revoked.
 - (b) A MAC may renew a current, valid certification by submitting a renewal form approved by the Board, the required renewal fee and regulatory fee, and attestation of having completed six (6) contact hours of Board-approved continuing education each year prior to the expiration date of the certificate.

- (c) A renewal form and the fees must be actually received by the Board office on or before the due date, whether submitted in person, by the U.S. Mail, or other delivery service.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.04 Reinstatement.

- (1) Any person seeking reinstatement of a certification after the expiration date of the certification is required to reapply for certification, fulfill all of the requirements of initial certification, show proof of having completed all past due continuing education, and may be required to submit proof of additional education or testing to show continued competency.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.05 Fees.

- (1) Application and Initial Certification Fee by Examination.....\$ 150.00
- (2) An applicant shall pay the examination fee set by the test service directly to the test service designated by the State to administer the examination.
- (3) Renewal Fee.....\$ 125.00
- (4) Replacement/Duplicate Certificate Fee..... \$ 25.00
- (5) State Regulatory Fee..... \$ 10.00
- (6) Training Program Initial Application Fee to offset the cost of two or more survey visits to evaluate the program for board review, consultation by a registered nurse, preparation of reports and other responsibilities as the board may require..... \$ 2,500.00
- (7) Training Program Annual Survey Fee to offset the cost of survey visits, compilation of annual reports and statistics and other duties as required by the Board of Nursing..... \$ 1,500.00
- (8) Peer Assistance Program Fee to offset the added cost of adding medication aides certified to contract for professional assistance..... \$ 15.00
- (9) Name Change Fee..... \$ 25.00
- (10) Reinstatement Fee..... \$ 100.00

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.06 Disciplinary Actions and Civil Penalties

- (1) The Board has the power to discipline medication aides certified based on the grounds set forth in T.C.A. § 63-7-127 and may deny, revoke or suspend any certificate to practice as a medication aide certified, or otherwise discipline a certificate holder, including but not limited to the imposition of civil penalties as are specified below.
- (2) Schedule of Civil Penalties
 - (a) A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, to such an extent that there is, or likely to be, an imminent, substantial threat to health, safety and welfare of an individual patient or the public. For the purpose of this section, practicing

as a MAC without a certification from the Board is one of the violations of the statute for which a Type A Civil Penalty is assessable.

- (b) A Type B Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto in such manner as to impact directly the care of patients of the public.
 - (c) A Type C Civil Penalty may be imposed whenever the Board finds a person who is required to be certified, permitted or authorized by the Board, guilty of a violation of Tenn. Code Ann. § 63-7-127 or the regulations pursuant thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.
- (3) Amount of Civil Penalties
- (a) A Type A Civil Penalty may be assessed in an amount of not less than \$500 or more than \$1,000.
 - (b) A Type B Civil Penalty may be assessed in an amount of not less than \$100 or more than \$750.
 - (c) A Type C Civil Penalty may be assessed in an amount of not less than \$50 or more than \$500.
- (4) In assessing the Civil Penalties pursuant to these rules the Board may consider the following factors:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of non-compliance;
 - (e) The interest of the public; and
 - (f) Willfulness of the violation.

Authority: T.C.A. §§ 63-1-134, 63-7-127 and 63-7-207.

1000-05-.07 Training Programs.

- (1) Any qualified educational institution seeking to conduct a MAC training program shall make application with a letter of intent and submit to the Board any documents, statements and forms as the Board may require and pay a training program application fee and annual fee. The complete application shall be submitted to the Board no later than forty-five (45) days prior to a scheduled Board of Nursing meeting. A representative of the Board shall conduct a site visit to survey the educational and clinical facilities prior to the program presenting a letter of intent to the Board. At a minimum, the institution seeking approval to conduct a training program shall provide the following in the letter of intent:
- (a) Name and address of qualified educational institution;
 - (b) Contact person with address, telephone number, fax number and email address;
 - (c) The name and address of principal clinical facilities;
 - (d) The location(s) of the courses or programs;

- (e) Letters of support;
 - (f) Documentation of need for the program; and
 - (g) Demonstration of the financial ability to support the program.
- (2) After the Board approves the letter of intent and prior to the acceptance of students, the institution shall submit documentation no later than forty-five (45) days prior to a scheduled Board meeting in order to obtain initial approval:
- (a) The number and type of education clock hours requested for each course;
 - (b) The name(s), license number(s), educational credentials and teaching and nursing experience of the director and all instructors;
 - (c) The program catalog;
 - (d) The topic outlines, which list the summarized topics covered in each course and upon request, a copy of any course materials;
 - (e) A summarization of any changes to the curriculum, should the prior approved program be substantially changed. A summarization of any changes should be submitted to the Board office at least forty-five (45) days prior to a scheduled Board meeting; and
 - (f) The submission of any other such information that the Board may deem necessary.
- (3) The qualified educational institution providing the training program shall:
- (a) Provide sufficient numbers of qualified faculty to implement the curriculum;
 - (b) Provide sufficient numbers of qualified faculty to assure that the students receive appropriate training from supervising licensed nurses in the nursing home or assisted care living facility:
 1. with which the training program has a written agreement to provide licensed nurse supervision in the supervised clinical practice component of the training program; and
 2. so that the students are prepared to administer medications as a MAC in a safe and effective manner.
 - (c) Provide financial support and resources adequate to teach the students the curriculum established in T.C.A. § 63-7-127, including, but not limited to classrooms, laboratories, equipment, supplies, and qualified administrative, instructional, and support personnel and services;
 - (d) Employ or contract with a registered nurse with an unencumbered Tennessee license who may teach a course or courses within the scope of practice and areas of competency;
 - (e) Ensure that the training program instructors have an unencumbered license to engage in the practice of nursing as a registered nurse with at least two (2) years of nursing experience and with medication administration experience and knowledge of the regulations and competence to administer medication in the long term care setting.
 - (f) Ensure that for the didactic hours, a ratio of no more than six (6) students for one (1) program instructor must be maintained; however, the ratio while engaged in clinical medication administration shall be one (1) student to one (1) supervising licensed nurse;
 - (g) Inform each student of the requirements for certification;

- (h) Provide a written program grading system policy which reflects a numerical grading system or scaled grading system. Students must make a passing grade in both didactic and clinical courses;
 - (i) Provide a written protocol or policy on the mechanism to evaluate a student's performance. At least one (1) written evaluation is required within the first half of the program;
 - (j) Provide a written policy on the dismissal of students;
 - (k) Provide a copy of a student's transcript to the student upon the student's written request and upon the student's completion of or withdrawal from the program; and
 - (l) Engage in program evaluation that includes, but is not limited to, obtaining feedback from students, instructors, and employers of individuals who have successfully completed the MAC training program.
- (4) The program shall not advertise that it is approved by the Board prior to or after a loss of Board approval.
 - (5) The program shall retain records of attendees of each course and the Board may at any time examine the records.
 - (6) The program shall ensure a first time test taker examination pass rate minimum of eighty-five per cent (85%). The Board will evaluate the program's examination pass rate on a quarterly and annual basis.
 - (7) The program shall file with the Board office an annual report containing, at a minimum, the following information:
 - (a) The number of students currently enrolled;
 - (b) The total enrollment for the year;
 - (c) The attrition and retention rate of students and faculty;
 - (d) The employment placement data;
 - (e) The number of students graduated;
 - (f) The number of students dismissed or withdrawn for the year;
 - (g) The number of students taking the certification examination; and
 - (h) The percentage of students taking the test for the first (1st) time and passing the certification examination.
 - (8) The program shall obtain approval by the Board on an annual basis thirty (30) days before the program commences each year.
 - (9) A representative of the Board shall inspect the institution that provides the program on an annual basis or as directed by the Board or Board's representative and shall submit a written report to the Board. If any deficiencies are noted, the Board may grant the institution a conditional approval of the training program until all deficiencies are corrected. The institution shall have thirty (30) days from the date the conditional approval is granted by the Board to correct the deficiencies. Upon correction of the deficiencies, the Board may grant full approval.
 - (10) If deficiencies are not corrected within the Board's prescribed time frame, the program will be denied approval or removed from approved status and must reapply for approval. Notice will be sent to the program upon denial or removal of approved status.

- (11) In addition to the minimum standard curriculum provided in T.C.A. § 63-7-127(i)(2), the qualified educational institution shall provide courses relative to the following topics:
- (a) Role of the MAC;
 - (b) Federal and state laws and rules relative to nursing homes and assisted care living facilities relative to medication aides certified;
 - (c) Confidentiality of protected health information;
 - (d) Drug mathematics, weights, and measures;
 - (e) Drug side effects;
 - (f) Drug administration requirements;
 - (g) Drug packaging systems;
 - (h) Drug storage, destruction, or return of medication;
 - (i) Documentation of medication administration; and
 - (j) Drug interactions.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.08 Peer Assistance Program.

- (1) A peer assistance program (approved by the Board) must provide at a minimum the following services to a MAC:
- (a) Referral for assessment of dependency and addiction;
 - (b) Referral to treatment centers and programs;
 - (c) Referral to aftercare treatment and counseling;
 - (d) Referral for psychological issues; and
 - (e) Ongoing monitoring of recovering professionals.

Authority: T.C.A. §§ 63-1-138, 63-7-127 and 63-7-207.

1000-05-.09 Continuing Education.

- (1) As a prerequisite to renewal, all certificate holders shall complete the following continuing education requirements:
- (a) Complete any and all continuing education or continued competency requirements, or both, necessary to maintain nurse aide certification under T.C.A. § 68-11-209(e), and the rules promulgated pursuant thereto; and
 - (b) A total of six (6) contact hours per year of continuing education; five (5) of which shall be in pharmacology provided by a licensed pharmacist or registered nurse and one (1) of which shall be relative to medication administration consistent with the functions of a MAC.
- (2) Each MAC shall attest to the timely attendance and completion of the required continuing education hours on the biennial certificate renewal form.

- (3) Each MAC shall retain independent documentation of attendance and completion of all continuing education courses for a period of two (2) years from the date of attendance. This documentation shall be produced for inspection and verification, if requested in writing by the Board.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.10 Supervision and Delegation.

- (1) A licensed nurse who provides care to nursing home or assisted care living facility residents may delegate the task of medication administration to a MAC in accordance with T.C.A. § 63-7-127(k)(1)(B) and these rules.
- (2) A licensed nurse who delegates medication administration to a MAC shall supervise the MAC by:
 - (a) Reviewing the medication delivery process to assure that there have been no errors in the stocking or preparing the medications;
 - (b) Accepting, transcribing, and reviewing resident medication orders;
 - (c) Monitoring residents to whom medications are administered for side effects or changes in health status;
 - (d) Reviewing documentation completed by the MAC, including, but not limited to the medication administration record;
 - (e) Providing on-site supervision and availability for immediate direction while in a nursing home setting;
 - (f) Providing on-site supervision or immediate and continuous availability through telecommunication while in an assisted care living facility setting; and,
 - (g) Delegating the administration of medication for each resident in writing to the MAC.
- (3) Prior to delegating medication administration to a MAC, a licensed nurse shall evaluate the following upon admission, and after any change in status or acuity, or any change in medication:
 - (a) The patient and the medication needs of the patient, including:
 1. The patient's mental and physical stability;
 2. The medication to be administered;
 3. The time frame during which the medication is to be administered;
 4. The route or method by which the medication is to be administered; and
 - (b) The licensed nurse has determined that it is appropriate for the resident to receive medication from the MAC.
- (4) When delegating the task of medication administration to a MAC, the licensed nurse shall communicate, in writing, the following to the MAC:
 - (a) The patient to whom the MAC shall administer medications;
 - (b) The medications the MAC shall administer;
 - (c) The time frames during which the medications are to be administered; and
 - (d) Any special instructions concerning the administration of medications to specific patients.

- (5) A licensed nurse who is on site at the nursing home or assisted care living facility may delegate the administration of as-needed medications to a MAC provided the licensed nurse completes a nursing assessment of the resident to whom the as-needed medication is to be administered immediately prior to the medication being administered.

Authority: T.C.A. §§ 63-7-127 and 63-7-207.

1000-05-.11 Standards of Practice.

- (1) A MAC shall demonstrate competence and responsibility in the task of medication administration.
- (2) A MAC shall ensure and promote a safe environment for nursing home or assisted care living facility residents.
- (3) A MAC shall accurately document in the patient's or resident's record the following information immediately after the administration of a medication:
 - (a) The name of the medication and the dosage administered;
 - (b) The route of the administration;
 - (c) The date and time of the administration;
 - (d) The name and credentials of the MAC who administered the medication;
 - (e) The name of the licensed nurse who delegated the administration of the medication;
 - (f) The resident's refusal or inability to ingest the medication or comply with the administration of the medication; and
 - (g) Any complaints by the resident about the medication administration or medication administered.
- (4) A MAC shall report the following to the delegating nurse or the delegating nurse's supervisor in a timely manner:
 - (a) The resident's request for an as-needed medication;
 - (b) The resident's refusal or inability to ingest the medication or comply with the administration of the medication;
 - (c) Any deviation from the delegated medication administration; and
 - (d) Any observations or information about the resident's condition that causes concern.
- (5) A MAC shall store drugs in accordance with the pharmacist's instructions.
- (6) A MAC shall remove drugs only from a properly labeled container or packaging that has been dispensed by a licensed pharmacist that contains the drug name; dosage; strength; name of the resident to whom it is to be dispensed; and drug expiration date.
- (7) A MAC shall complete all necessary tasks to ensure safe medication administration to a resident, including, but not limited to the following:
 - (a) Verifying the identify of the resident to whom the medication is to be administered;
 - (b) Ensuring that medication administration for the resident has been delegated and documented by the delegating licensed nurse prior to the administration of the medication;

- (c) Ensuring that the medication is being administered to the resident in accordance with the delegation and prescriber instructions;
 - (d) Ensuring that the correct medication in the correct dosage is administered to the resident;
 - (e) Witnessing the resident swallowing a drug that is to be ingested orally; and
 - (f) Documenting and reporting a medication error to the delegating licensed nurse who is on-site at the nursing home or assisted care living facility, or via a two-way telephone conversation.
- (8) A MAC shall maintain the confidentiality of protected health information obtained in the course of the MAC's duties and responsibilities.
 - (9) A MAC shall not delegate the task of medication administration to any other person.
 - (10) A MAC shall not falsify any resident record or any other document prepared or utilized in the course of, or in conjunction with, the administration of medication.
 - (11) A certified MAC shall maintain professional boundaries with each resident.
 - (12) A MAC shall not:
 - (a) Administer medications containing a controlled substance, as defined in T.C.A § 63-10-201 et seq.;
 - (b) Administer medications when such administration would require a dosage calculation by the medication aide;
 - (c) Directly receive orders from a physician or other medication prescriber;
 - (d) Administer barium or other contrast media;
 - (e) Administer chemotherapeutic agents;
 - (f) Administer medications administered as drops to the eye, ear or nose;
 - (g) Administer rectal and vaginal medications;
 - (h) Administer medications delivered by metered hand-held inhalers;
 - (i) Administer medications delivered by aerosol/nebulizer;
 - (j) Apply topical medications ordered for the treatment of pressure ulcers or skin grafts; or
 - (k) Change a dosage amount to adhere to a change in a physician's order.
 - (13) A MAC shall not, under any circumstances, administer medications by certain methods or routes, or both. These include, but are not necessarily limited to, the following:
 - (a) Injection;
 - (b) Intravenous;
 - (c) Central lines;
 - (d) Intrathecal;
 - (e) Colostomy;
 - (f) A surgically placed feeding tube, e.g., gastrostomy, jejunostomy;

- (g) Nasogastric;
- (h) Non-metered inhaler;
- (i) Intradermal;
- (j) Urethral;
- (k) Epidural;
- (l) Endotracheal;
- (m) Intramuscular; or
- (n) Subcutaneous.

Authority: T.C.A. §§ 63-7-127, 63-7-207 and 63-10-201.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Donald Bell, APN	X				
Terri Bowman, LPN				X	
Barbara Brennan, RN	X				
Marilyn A. Dubree, RN	X				
Kathleen Harkey				X	
Deborah Holliday, LPN	X				
Cheryl Stegbauer, RN	X				
Marian Steward, RN	X				
Arthur Thompson, LPN	X				
Betty J. Thompson, RN	X				
Carol Lynn Thompson, APN	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Nursing on 10/07/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/13/10

Rulemaking Hearing(s) Conducted on: (add more dates). 10/07/10

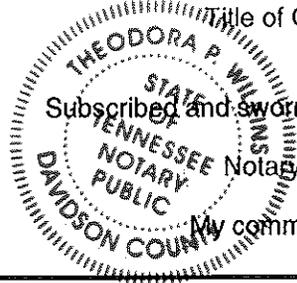
Date: 1/3/12

Signature: Mark S. Waters

Name of Officer: Mark S. Waters

Deputy General Counsel

Title of Officer: Department of Health



Subscribed and sworn to before me on: 1/3/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
2-17-12
 Date

Department of State Use Only

Filed with the Department of State on: 5/15/12

Effective on: 8/13/12



Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC HEARING COMMENTS

RULEMAKING HEARING- MEDICATION AIDES CERTIFIED RULE 1000-05

TENNESSEE BOARD OF NURSING

The rulemaking hearing for the Tennessee Board of Nursing was held on October 7, 2010, in the Department of Health Conference Center's Iris Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. E. Ashley Carter, Deputy General Counsel presided over the hearing.¹

Comments were received at the hearing as follows:

1. A letter was received and comments were made requesting less restrictive rules for the program instructors.

Board's Response: The Board voted to revise the language in the proposed rule 1000-05-.07(3)(e) by deleting the requirement for instructors to have experience in medication administration in a nursing home, assisted care living facility or gerontological experience and changing the requirement to only require medication experience with knowledge of the regulations and competency to administer medication in a long-term care setting.

2. A request was made for an increase of the instructor to student ratio of one to six for didactic hours.

Board's Response: The board expressed concern with the short timeframe of training and the amount of information to be learned in that timeframe and felt a larger ratio would not be beneficial. The board voted to keep rule 1000-05-.07(3)(f) as proposed in the Notice and not change it.

3. A comment was made that there appears to be a contradiction with rules 1000-05-.02(9) and 1000-05-.10(1)(f) in the supervisory and assessment requirements. In reference to rule 1000-05-.10(5)(a), it was further stated that it is thought a resident assessment does not need to be made every time an "as needed (PRN)" medication is requested by a resident of an ACLF.

Board's Response: The board voted to clarify the language. The board made no decision to change rule 1000-05-.10(5)(a).

4. A comment was made that there may be some conflict with the proposed rules for MACs and the current rules for assisted care living facilities.

Board's Response: After consultation with the legal counsel for the Board of Nursing and Health Care Facilities from the Office of General Counsel, it was determined no substantive conflict exists.

5. A request was made concerning the language of the peer assistance rule to add the words "referral to" in rule 1000-05-.08(1)(c), and the addition of a new subparagraph (e) to add "ongoing monitoring of recovering professionals."

¹ An earlier rulemaking hearing was held on January 21, 2010, pursuant to T.C.A. § 63-7-127(l)(1). Subsequently, the statute was amended to include subsection (m), effective May 26, 2010. The October 7, 2010, rulemaking hearing implements the provisions of T.C.A. § 63-7-127 as amended.

Board's Response: The board voted to add the suggested language.

6. A written request to include the Prohibited List of Medications and Prohibited Means of Administration in the rules was received.

Board's Response: The board voted to include the Prohibited List of Medications and Prohibited Means of Administration in the rules as specified in T.C.A. § 63-7-127.

7. A letter was received with two requests:

1. A request that a second alternative to schools be considered and included by the board in the rules to allow licensed nursing home and assisted living facilities to establish their own educational courses for the training of Certified Medication Aides;

2. A request that a grandfather clause be considered to enable currently certified CNAs to take only the coursework that was not part of their prior CNA/CNT training; suggesting that the prior CNA training (pursuant to rule 1200-08-06-.15) overlaps with the current education requirements and therefore would be duplicative.

(Also included with the letter was a handout with the language of rule 1200-08-06-.15 and another handout with some examples of "common tasks and education" of CNAs.)

Board's Response: The board voted to keep the rules as proposed.

At a subsequent meeting of the board on October 5, 2011, the board voted to approve the following rule revisions:

Rule 1000-05-.02(2) was revised to delete the word "drug" in the sentence and replace it with "oral or topical medication for a specified condition." Paragraph (9) was revised by deleting the language "the delegating licensed nurse is to be on site and immediately available to the MAC, unless otherwise specified in these rules" and adding new language to newly renumbered paragraph (23): "The delegating licensed nurse shall be on-site and immediately available where required by law. If not required to be on-site, the delegating nurse shall be immediately available for a two-way telephone conversation." Original paragraph (23) was deleted.

Rule 1000-05-.03(2)(b)7 was deleted and paragraphs 8 and 9 were renumbered.

Rule 1000-05-.06 was revised by adding the words "disciplinary actions and" to the title, new paragraph (1) was added, and paragraphs (2), (3) and (4) were renumbered.

Rule 1000-05-.07(3)(b) was revised by expanding the wording of the subparagraph to be more explicit. Subparagraph (f) was revised by changing "program instructor" to "supervising licensed nurse." Subparagraph (10) was revised by adding the words "denied approval" and "denial" in reference to program approval.

Rule 1000-05-.10 was revised by switching the positions of paragraphs (1) and (2). The words "upon admission, and after any change in status or acuity, or any change in medication" were added to the end of paragraph (3) for clarification. Subparagraph (5)(a) was moved to be part of paragraph (5) and subparagraph (5)(b) was moved to subparagraph (3)(b) and reworded to read "The licensed nurse has determined that it is appropriate for the resident to receive medication from the MAC."

Upon subsequent review, subparagraph (7)(f) of rule 1200-05-.11 was clarified by adding "or via a two-way telephone conversation" to be consistent with paragraph (23) of rule 1200-05-.02.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

REGULATORY FLEXIBILITY ANALYSIS

Tennessee Board of Nursing; Rule No. 1000-05

- (1) **The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

- (2) **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

- (3) **The establishment of flexible compliance and/or reporting requirements for small businesses.**

The proposed rules are not written with special consideration for the flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

- (4) **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the Division to achieve its mandated mission in licensing nurses.

- (5) **The consolidation or simplification of compliance or reporting requirements for small businesses.**

Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

- (6) **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.**

When the health-related licensing boards' rules contain standards, there are always statements included which specify what constitutes compliance with such standards.

- (7) **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Tennessee Board of Nursing; Rule No. 1000-05

1. **Name of Board, Committee or Council:** Board of Nursing
2. **Rulemaking hearing date:** October 7, 2010
3. **Type or types of small businesses that will be directly affected by the proposed rules:**
 - (a) Nursing homes and assisted care living facilities who choose to use Medication Aides Certified will be directly affected by the proposed rules.
4. **Types of small businesses that will bear the cost of the proposed rules:**
 - (a) Nursing homes and assisted care living facilities who choose to have a training program for Medication Aides Certified will bear the cost of the proposed rules; and
 - (b) Nurse Aides who choose to become a Medication Aide Certified will bear the cost of the proposed rules.
5. **Types of small businesses that will directly benefit from the proposed rules:**

Nursing homes and assisted care living facilities who choose to use Medication Aides Certified will be directly affected by the proposed rules.
6. **Description of how small business will be adversely impacted by the proposed rules:**

Nursing homes and assisted care living facilities will not be adversely impacted by the proposed rule as hiring personnel from this category of certification could lessen the overall cost of care of residents of these facilities.
7. **Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:**

There are no less burdensome means to accomplish the purpose of this new rule.
8. **Comparison of the proposed rule with any federal or state counterparts:**
 - (a) **Federal:** The Board is not aware of any federal counterparts.
 - (b) **State:** The Board's proposed new rule is consistent with the qualifications for licensure in other states regulating the practice of nursing.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The new rules for Medication Aides Certified are not expected to have an impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rules are promulgated to implement the licensure program and corresponding rules for medication aides certified as set forth in T.C.A. § 63-7-127. These rules change the Board of Nursing policy and practice by allowing licensed nurses to provide delegation of medication administration in a nursing home or assisted care living facility to medication aides certified.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The rules are promulgated as indicated in T.C.A. § 63-7-127.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Nursing Homes and assisted living facilities will gain a level of nursing staff to administer medications consistent with T.C.A. § 63-7-127. Tennessee Nurse's Association opposes adoption of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

An Attorney General opinion, Opinion number 10-65, addressed the terms defined in T.C.A. § 63-7-127.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

It is estimated that a minimal increased fiscal impact will be incurred by the Board of Nursing administration.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mark S. Waters, Deputy General Counsel, Department of Health; Elizabeth Lund, Executive Director of the Board of Nursing

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Mark S. Waters, Deputy General Counsel; Department of Health; Elizabeth Lund, Executive Director of the Board of Nursing.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mark S. Waters, Deputy General Counsel; Department of Health, 220 Athens Way, Suite 210, Nashville, TN 37243, (615) 741-1611. Mark.S.Waters@tn.gov; Elizabeth Lund, Executive Director of the Board of Nursing, 227 French Landing, Suite 300, Nashville, TN 37243, (615) 532-5166, Elizabeth.Lund@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.