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 File Date: 08/13/2010

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Board of Nursing
Division:	
Contact Person:	E. Ashley Carter Deputy General Counsel
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator at the Division of Health Related Boards
Address:	227 French Landing, Suite 300 Nashville, TN 37243
Phone:	(615) 532-3202 or (Toll Free) 1-800-778-4123
Email:	

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Iris Conference Room		
Address 2:	227 French Landing, Heritage Place 37243		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	October 7, 2010		
Hearing Time:	9:00 am	<input checked="" type="checkbox"/> _X_ CST	<input type="checkbox"/> _EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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	Definition
1000-05-.03	Applications, Certification and Renewal

1000-05-.04	Retirement and Reinstatement
1000-05-.05	Fees
1000-05-.06	Civil Penalties
1000-05-.07	Training Programs
1000-05-.08	Peer Support Programs
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.

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

Authority: T.C.A. § 63-7-127.

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 drug 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 or other drug of a specified condition.
- (3) "Assisted Care Living Facility" shall have the same meaning as set forth in T.C.A. § 68-11-201(4).
- (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 a task or activity 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; the delegating licensed nurse is to be on site and immediately available to the 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) "MAC" (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(31)(A).
- (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 (IIHI) 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. §§ 1302d – 1329d-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) "On-site Supervision" means overseeing with authority, including the initial and ongoing direction, procedural guidance, and observation and evaluation of a MAC by a delegating licensed nurse who is on-site and immediately available.
- (24) "General Supervision" means overseeing with authority a MAC who is performing general nursing assistant tasks in a nursing home or assisted care living facility by a licensed practical nurse, registered nurse, or advanced practice nurse.

Authority: T.C.A. § 63-7-127.

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 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 no felony criminal conviction;
8. 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
9. 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, attestation of having completed six (6) contact hours each year of Board-approved continuing education prior to the expiration date of the license.
- (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.

1000-05-.04 Reinstatement.

SS-7037 (October 2009)

- (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.

1000-05-.05 Fees.

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|------|--|-------------|
| (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.

1000-05-.06 Civil Penalties

- (1) 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.

- (2) 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.
- (3) 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. § 63-7-127.

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 in a clinical setting to assure patient safety and meet student learning needs;
 - (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 including at least six months with medication administration within the last five (5) years in a nursing home, assisted care living facility, or gerontological nursing experience.
 - (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) program instructor;
 - (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 removed from approved status and must reapply for approval. Notice will be sent to the program upon 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.

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) aftercare treatment and counseling; and
 - (d) referral for psychological issues.

Authority: T.C.A. § 63-7-127.

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.

1000-05-.10 Supervision and Delegation.

- (1) 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.
- (2) 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.
- (3) Prior to delegating medication administration to a MAC, a licensed nurse shall evaluate the following:
- (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 ability of the MAC to safely administer the medication being delegated.
- (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 all of the following are satisfied:
- (a) 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; and
 - (b) The licensed nurse determines that the as-needed medication may be safely administered by the MAC.

Authority: T.C.A. § 63-7-127.

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.
- (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.

Authority: T.C.A. § 63-7-127.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8/13/10

Signature: E Ashley Carter

Name of Officer: E. Ashley Carter

Deputy General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 8/13/10

Notary Public Signature: Leodora P. Wilkins

My commission expires on: 11/7/2011



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Filed with the Department of State on: 8/13/10

Tre Hargett

Tre Hargett
Secretary of State

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