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Sequence Number: 03-14-10
Rule ID(s): 4657
File Date: 03/04/2010
Effective Date: 08/29/2010

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	Bureau of TennCare 310 Great Circle Road Nashville, Tennessee
Zip:	37243
Phone:	(615)507-6446
Email:	George.woods@tn.gov

Revision Type (check all that apply):

___ Amendment
___ New
_X_ 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**
1200-13-15	TennCare Administrative Hearings and Officials
Rule Number	**Rule Title**

(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)

Rules of
Tennessee Department of Finance and Administration
Bureau of TennCare

Chapter 1200-13-15
TennCare Administrative Hearings and Officials

Repeal

Rule Chapter 1200-13-15 TennCare Administrative Hearings and Officials is repealed in its entirety.

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration on 12/11/2009 (*date as mm/dd/yyyy*), and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 12/11/2009

Signature: [signature]

Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare
Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 12-11-2009

Notary Public Signature: Marsha Thibault

My commission expires on: 10/25/2011

MARSHA THIBAULT STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY

All proposed 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.

[signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

2-26-10
Date

Department of State Use Only

Filed with the Department of State on: 3/4/10

Effective on: 8/29/10

[signature]

Tre Hargett
Secretary of State

RECEIVED
2010 MAR -4 AM 10: 11
SECRETARY OF STATE
PUBLICATIONS

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.

(If applicable, insert Regulatory Flexibility Addendum here)

The rule has no affect on small businesses.

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 rule is being promulgated to repeal an obsolete rule chapter.

(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 rule is lawfully promulgated and adopted by the Department of Finance and Administration in accordance with Tennessee Code Annotated §§ 4-5-202 and 71-5-105.

(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;

The person, organization, corporation or governmental entity most directly affected by this rule is the Tennessee Department of Finance and Administration.

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

The rule was reviewed and approved by the Tennessee Attorney General. No additional opinion was given or requested.

(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;

The promulgation of this rule is not anticipated to have an effect on state and local government revenues and expenditures.

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

Darin J. Gordon
Director, Bureau of TennCare

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

Darin J. Gordon
Director, Bureau of TennCare

(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

310 Great Circle Road
Nashville, TN 37243
(615) 507-6443
Darin.J.Gordon@tn.gov

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

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REDLINE

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Rules of
Tennessee Department of Finance and Administration
Bureau of TennCare

Chapter 1200-13-15
TennCare Administrative Hearings and Officials

Repeal

Rule Chapter 1200-13-15 TennCare Administrative Hearings and Officials is repealed in its entirety.

Statutory Authority: T.C.A. §§ 4-5-202 and 71-5-105.

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-15
TENNCARE ADMINISTRATIVE HEARINGS AND OFFICIALS

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1200-13-15-.01 DEFINITIONS.

(1) Administrative Judge. An impartial employee or official of the Department of State Administrative Procedures Division who is licensed to practice law and authorized by law to conduct contested case proceedings pursuant to T.C.A. § 4-5-301.

(2) Agency. The Bureau of TennCare.

(3) Administrative Procedures Division (APD). The Department of State Administrative Procedures Division.

(4) Appeal. The process of obtaining a contested case proceeding as a result of an Agency adverse action regarding matters affecting or relating to eligibility for TennCare Standard, or the process of obtaining review of an initial order by the Commissioner's Designee or judicial review of a final order.

(5) Applicant. An individual who submits an application for TennCare Standard health coverage or an individual on whose behalf an application for TennCare Standard health coverage is submitted.

(6) Burden of Proof. The "burden of proof" refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of

proof is the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue. Generally, the party with the burden of proof presents his or her proof first at the hearing. The hearing officer or administrative judge makes all decisions regarding which party has the burden of proof on any issue, and determines the order of proceedings, taking into account the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand.

(7) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare, the program administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.

(8) Commissioner. The chief administrative officer of the Tennessee Department where the TennCare Bureau is administratively located.

(9) Commissioner's Designee. A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for stay or reconsideration of final orders.

(10) Contested Case Proceeding. An administrative hearing proceeding in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.

(11) Department. The Tennessee Department of Finance and Administration.

(12) Findings of Fact. The factual findings following the administrative hearing, enumerated in the initial and/or final order, which include a concise and explicit statement of the underlying facts of record to support the findings.

(13) Final Order. The initial order becomes a final order without further notice if not timely appealed, or if the initial order is appealed pursuant to T.C.A. § 4-5-315, the Commissioner or Commissioner' s Designee may render a final order. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included.

(14) Hearing. A contested case proceeding.

(15) Hearing Officer. An impartial official of the Department of Finance and Administration or the Department of State Administrative Procedures Division who is designated by the Commissioner or his/her designated representative to conduct contested case administrative hearing proceedings. The person so designated shall have no direct involvement in the action under consideration prior to the filing of the appeal.

(16) Initial Order. The decision of the hearing officer or administrative judge following a contested case administrative hearing proceeding. The initial order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed. It shall include a statement of any circumstances under which the initial order may, without further notice, become a final order. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included.

(17) Notice of Hearing. The pleading filed with the TennCare Administrative Hearing Unit or the Administrative Procedures Division by the agency upon receipt of an appeal. It shall contain a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. §4-5-307 (b).

(18) Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(19) Person. Any individual.

(20) Pleadings. Written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form, such as, a "Notice of Hearing", "Petition for Hearing" or "Answer", or, where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.

(21) TennCare Administrative Hearing Unit (TAHU). The office established within the Department of Finance and Administration to provide Hearing Officers for the purpose of conducting Administrative Hearings of appeals of agency actions regarding matters affecting eligibility under TennCare Standard.

(22) TennCare Standard. TennCare Standard is that part of the TennCare Program which provides health coverage for Tennessee residents who are not eligible for Medicaid under Tennessee' s Title XIX State Plan for Medical Assistance and is further defined in the Rules and Regulations of Tennessee Department of Finance And Administration Bureau of TennCare at Chapter 1200-13-14.

(23) TRCP. The Tennessee Rules of Civil Procedure.

(24) Uniform Administrative Procedures Act (UAPA). The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.02 SCOPE AND AUTHORITY OF AN ADMINISTRATIVE HEARING OFFICIAL.

(1) Tennessee's Medical Assistance Act and the Federal statutes of the Social Security Act (which includes Medical Assistance/Medicaid) and constitutional provisions require that there be provisions for appeals and fair hearings for applicants and recipients of assistance and services provided by the Department. The Tennessee Department of Finance and Administration and the Tennessee Department of Human Services have been designated responsibility for fulfillment of hearing provisions in the medical assistance programs. Medical assistance eligibility hearings shall meet the due process standards set forth in *Goldberg v. Kelly*, 397 US 245 (1970) and the standards set forth in the Federal Regulations.

Subject to any superseding federal or state law, these rules shall govern contested case proceedings conducted for the purpose of determining non-Medicaid TennCare Standard eligibility and related issues, and will be relied upon by hearing officers, administrative judges, and commissioner's designees conducting such proceedings. More specifically, these rules shall govern contested case proceedings determining TennCare Standard eligibility subsequent to a determination by TDHS that a person is not eligible for Medicaid. TennCare Medicaid eligibility appeals shall be conducted by the Department of Human Services pursuant to Chapter 1240-5 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

(2) In any procedural situation that arises that is not specifically addressed by these rules, reference may be made to the following authorities in the order listed for guidance as to the proper procedure to follow: the Tennessee Uniform Administrative Procedures Act and the rules promulgated thereunder, and the Tennessee Rules of Civil Procedure.

(3) The Commissioner has placed responsibility for conducting contested case proceedings in the TennCare Administrative Hearing Unit, and the Department of State Administrative Procedures Division. The hearing officer, or administrative judge is vested with full authority to conduct the contested case process in accordance with these rules, as applicable.

(4) The hearing officer or administrative judge shall have the authority to do the following:

(a) Schedule and conduct the hearing;

(b) Administer oaths;

(c) Issue subpoenas;

(d) Rule upon offers of proof;

(e) Regulate the course of the hearing;

(f) Write an initial order stating his/her decision; and

(g) Rule on petitions for reconsideration or stays of the initial order issued by the same hearing officer or administrative judge.

(5) The Commissioner has placed responsibility in the TennCare Commissioner's Designee Unit for conducting appeal reviews of Initial Orders and for ruling on petitions for reconsideration or stays of final orders issued by the commissioner's designee. The commissioner's designee is vested with full authority to conduct such proceedings in accordance with T.C.A. §§4-5-315, 4-5-316, 4-5-317, and these rules.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.03 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

(1) All pleadings and any other materials required to be filed by a time certain as the result of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the TAHU or the APD, as designated, within the required time period.

(2) Upon the involvement of either the TAHU or the APD in any contested case, all pleadings and other materials required to be filed or submitted prior to the contested case hearing shall be filed with the designated office, where they will be stamped with the date and hour of their receipt.

(3) Petitions for review of an initial order and for reconsideration or stay of a final order may be filed with the agency or either the TAHU or the APD, as designated in the order.

(4) Discovery materials that are not actually introduced as ev idence need not be filed, except as provided at rule 1200-13-15-.10.

(5) Copies of any and all materials filed with the agency or the TAHU or the APD in a contested case shall also be served upon all parties, or upon their counsel, and shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or equivalent carrier or by hand delivery.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.04 TIME AND CONTINUANCES.

(1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. The Notice of Hearing will provide notice of this provision or inform the applicants/enrollees of the specific calendar dates by which certain actions must be taken.

(2) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the hearing officer or administrative judge or commissioner's designee as soon as practicable.

(3) Any case may be continued by mutual consent of the parties when approved by the hearing officer or administrative judge or commissioner's designee.

(4) If an enrollee or applicant requests a continuance, any mandatory deadlines for conducting hearings and issuance of initial orders by a hearing officer or an administrative judge shall be extended by like period of time. Calculation of the 90-day timeframe may be adjusted only to the extent that any delays are attributable to the beneficiary. The beneficiary should only be charged with the amount of delay occasioned by the beneficiary's acts or omissions, and any other delays should be deemed to be the responsibility of TennCare. The TennCare Bureau is responsible for keeping track of the timeframes.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.05 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

(1) Commencement of Action. A contested case proceeding may be commenced by original agency action, by appeal from an agency action, by request for hearing, by an affected person, or by any other lawful procedure.

(2) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the agency, which notice shall comply with T.C.A. § 4-5-307(b).

(3) Supplemented Notice. In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later writings.

(4) Filing of Documents. When a contested case is commenced, the agency shall provide the TAHU or the APD with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency concerning that particular case. Legible copies may be filed in lieu of originals.

(5) Answer. The party may respond to the matters set out in the notice or other original pleading by filing a written answer with the agency in which the party may:

(a) Object to the notice upon the ground that it does not state acts or omissions upon which the Agency may proceed.

(b) Object on the basis of lack of jurisdiction over the subject matter.

(c) Object on the basis of lack of jurisdiction over the person.

(d) Object on the basis of insufficiency of the notice.

(e) Object on the basis of insufficiency of service of the notice.

(f) Object on the basis of failure to join an indispensable party.

(g) Generally deny all the allegations contained in the notice or state that he is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges.

(h) Admit in part or deny in part allegations in the notice and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues.

(i) Assert any available defense.

(6) Amendment to Notice. The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing officer or administrative judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory or regulatory basis for denial or termination of enrollment without original service and running of times applicable to service of the original notice. The hearing officer or administrative judge shall not grant a continuance to amend the notice or original pleading if such would prejudice an applicant's or an enrollee's right to a hearing and initial order within any mandatory timeframes.

(7) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing officer or administrative judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing officer or administrative judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments. However, when the applicant/enrollee is not represented by counsel, the burden cannot be put on such individuals to object to the State's trying of cases with proof and legal authorities not set out in the pleadings.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.06 SERVICE OF NOTICE OF HEARING.

In any case in which an applicant or an enrollee has requested a hearing from the agency, a copy of the notice of hearing shall be delivered to the party by certified or registered mail, postage prepaid or personal service, at the address required to be kept current with the agency by T.C.A. §§ 71-5-106(l) and 110(c)(1) and the address provided with the request for hearing, if different from the address on file with the agency. However, TennCare must use the best address known to it, whether provided directly by the applicant/enrollee, or indirectly.

(1) In the event of a motion for default where there is no indication of actual service on a party, the following circumstances will be taken into account in determining whether to grant the default:

(a) Whether and to what extent actual service is practicable in any given case;

(b) What attempts were made to get in contact with the party by telephone or otherwise; and

(c) Whether the agency has actual knowledge or reason to know that the party may be located elsewhere than the address to which the notice was mailed.

(2) All Notices of Hearing shall inform the enrollee or applicant of the right to an in-person hearing.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.07 TELEPHONIC, TELEVISED AND ALTERNATE ELECTRONIC METHODS FOR CONDUCTING HEARINGS AND PREHEARING CONFERENCES.

In the discretion of the hearing officer or administrative judge, and with the concurrence of the parties, all or part of the contested case proceeding, including any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

(1) In any action set for hearing, the hearing officer or administrative judge assigned to hear the case, upon his/her own motion or upon motion of one of the parties or their qualified representative, may

(3) Time Limits; Argument - A party may request oral argument on a motion. However, parties are encouraged to submit a brief memorandum of law with the motion. Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the hearing officer or administrative judge.

(4) Oral Argument - If oral argument is requested, the pre-hearing motion may be argued by telephone conference call.

(5) Affidavits; Briefs and Supporting Statements

(a) Motions and responses thereto may be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses thereto may be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits should set forth only facts which are admissible in evidence under *T.C.A. §4-5-313*, and to which the affiants are competent to testify. Such affidavits must be delivered to the opposing party no less than ten (10) days prior to a hearing in the form provided in *T.C.A. §4-5-313*, so as to afford the opponent the opportunity to question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses. Unless the opposing party within seven (7) days after delivery delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto. "Delivery" for purposes of affidavits means actual receipt.

(b) In the discretion of the hearing officer or administrative judge, a counsel for the TennCare Bureau may be required to submit briefs or supporting statements pursuant to a schedule established by the hearing officer or administrative judge.

(6) Disposition of Motions; Drafting the Order

(a) When a prehearing motion has been made in writing or orally, the hearing officer or administrative judge shall render a decision on the motion by issuing an order.

(b) The hearing officer or administrative judge after signing any order shall cause the order to be served forthwith upon the parties. Nothing in this rule shall preclude the right to seek interlocutory judicial review under T.C.A. §4- 5-322(a).

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.10 DISCOVERY.

Any party to a contested case proceeding shall have the right to reasonable discovery pursuant to T.C.A. § 4-5-311.

(1) Parties are encouraged to attempt to achieve any necessary discovery informally. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.

(2) Upon motion of a party or upon the hearing officer or administrative judge's own motion, the hearing officer or administrative judge may order that discovery be completed by a certain date.

(3) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion shall:

(a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;

(b) State the reason or reasons supporting the motion; and

(c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.

(4) The hearing officer or administrative judge shall decide any motion relating to discovery pursuant to the UAPA and the rules promulgated thereunder or the TRCP.

(5) Other than as provided in subsection (3) above, discovery materials need not be filed with either the agency or, as designated, the TAHU or the APD.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.11 SUBPOENA.

The hearing officer or administrative judge, at the request of any party, shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.12 EVIDENCE IN HEARINGS.

In all agency hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the agency, or at the motion of any party, witnesses may be excluded prior to their testimony. The standard for admissibility of evidence, including admissibility of affidavits, is set forth at *T.C.A. §4-5-313.*

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.13 EXAMINATION OF CASE FILE.

Any party to a contested case proceeding shall have the right to examine the contents of the case file and all documents and records to be used as evidence at the hearing, at a reasonable time before the date of the hearing and during the hearing. Any party or his/her representative may copy entries or documents to be introduced at the hearing as supporting evidence.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.14 ORDER OF PROCEEDINGS.

(1) Order of proceedings for the hearing of contested cases, including reconsideration hearings:

(a) Hearing officer or administrative judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.

(b) Hearing is called to order by the hearing officer or administrative judge.

(c) Hearing officer or administrative judge introduces self and gives a very brief statement of the nature of the proceedings.

(d) Hearing officer or administrative judge asks if the parties are represented by counsel, and if so, counsel is introduced.

(e) The hearing officer or administrative judge states what documents the record contains.

(f) The hearing officer or administrative judge swears the witnesses.

(g) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding and are asked to leave the hearing room. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room, and the agency may have one appropriate individual, who may also be a witness, act as its party representative.

(h) Any preliminary motions, stipulations, or agreed orders are entertained.

(i) Opening statements are allowed by both parties.

(j) The party determined by the administrative judge or hearing officer to have the burden of proof (moving party) calls witnesses and questioning proceeds as follows:

1. Moving party questions.

2. Other party cross-examines.

3. Moving party redirects.

4. Other party re-cross-examines.

5. Further questions by the parties. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)

(k) Other party calls witnesses and questioning proceeds as follows:

1. Other party questions.

2. Moving party cross-examines.

3. Other party redirects.

4. Moving party re-cross-examines.

5. Further questions by the parties. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)

(l) The moving party and the other party are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.

(m) Closing arguments are allowed to be presented by both parties.

(n) The hearing officer or administrative judge announces the decision or takes the case under advisement.

(2) The parties are informed that an initial order will be written and sent to the parties and that the initial order will inform the parties of their appeal rights.

(3) Subparagraph (1) of this rule is intended to be merely a general outline as to the conduct of a contested case hearing and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.15 INITIAL ORDER.

(1) The initial order issued by the hearing officer or administrative judge shall be based exclusively on evidence introduced at the administrative hearing and shall contain the elements set forth at rule 1200-13-15- .01.

(2) The initial order shall be served on all parties of record.

(3) The initial order shall include a statement of the available procedures and time limits for seeking reconsideration and/or appeal to the Commissioner.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.16 THE FINAL ORDER.

(1) The final order shall be issued pursuant to the authority of the Commissioner of the Department of Finance and Administration or his/her designated representative. The final order shall be binding upon all parties unless it is stayed, reversed or otherwise set aside through judicial review.

(2) The final order in a contested case shall be in writing and shall be served on all parties of record.

(3) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.17 DEFAULT AND UNCONTESTED PROCEEDINGS.

(1) Default.

(a) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of a contested case proceeding after due notice thereof may be cause for holding such party in default pursuant to T.C.A. § 4-5-309. Failure to comply with any lawful order of the hearing officer or administrative judge, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case proceeding and thereby be cause for a holding of default.

(b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and to adjourn the proceedings or continue on an uncontested basis.

(c) The hearing officer or administrative judge determines whether the service of notice is sufficient as a matter of law, according to rule 1200-13-15-.06.

(d) If the notice is held to be adequate, the hearing officer or administrative judge shall grant or deny the motion for default, taking into consideration the criteria listed in rule 1200-13-15-.06. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned if the absent party has the burden of proof or conducted without the participation of the absent party if the moving party bears the burden of proof.

(e) The hearing officer or administrative judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after service of

such notice of default, may file a motion for reconsideration under T.C.A. §4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing officer or administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. §4-5-317.

(2) Effect of Entry of Default.

(a) Upon entry into the record of the default of an applicant or an enrollee at a contested case proceeding, the appeal shall be dismissed as to all issues on which the applicant or enrollee bears the burden of proof.

(b) Upon entry into the record of the default of the applicant or enrollee at a contested case hearing, the matter shall be tried as uncontested as to all issues on which the agency bears the burden of proof.

(3) Uncontested Proceeding. When the matter is tried as uncontested, the agency has the burden of establishing its allegations by a preponderance of the evidence presented.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.18 RECORD OF CONTESTED CASE PROCEEDINGS.

The official record of each contested case shall be maintained as r equired by 4-5-319. As particularly required by 4-5-319, a record (which may consist of a tape or similar electronic recording) shall be made of all oral contested case proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be transcribed by the agency at its expense. If the applicant/enrollee appeals the initial order, the record will be transcribed at agency expense. This record shall be maintained for a period of time, not less than three years.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.19 HEARING DECISION EVIDENCE.

Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.20 NOTICE OF RIGHT TO APPEAL THE INITIAL ORDER.

Written notice of the right to appeal is to accompany the initial order mailed to the parties. A petition for appeal from an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order. If an initial order is subject to both a timely petition for reconsideration and appeal, the petition for reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the petition for reconsideration.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.21 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE INITIAL ORDER.

Written notice of the right to file a petition for reconsideration shall accompany the initial order mailed to the parties. A petition for reconsideration of an initial order must be filed with the TAHU or APD, as designated, within fifteen (15) days after entry of an initial order, stating the specific grounds upon which relief is requested. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.22 NOTICE OF RIGHT TO SEEK JUDICIAL REVIEW OF THE FINAL ORDER.

Written notice of the right to seek judicial review and the right to request a stay shall accompany the final order mailed to the parties. A petition for judicial review of a final order under TCA §4-5-322 must be filed with the Chancery Court having jurisdiction within sixty (60) days after the entry of the final order, or if a petition for reconsideration of the final order is granted, within sixty (60) days of the entry of any order disposing of the petition. The filing of a petition for reconsideration does not itself act to extend the sixty (60) day period, if the petition is not granted.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.23 NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

Written notice of the right to petition for reconsideration of the final order shall accompany the final order to the parties. Any party who has been aggrieved by a final order may, within fifteen (15) days following the effective date of the order, file a written petition for reconsideration with the TAHU or APD, as designated, which shall specify in detail the reasons for the request. If no action is taken on the request within twenty (20) days of filing of the petition, it is deemed denied.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.24 EFFECT ON THE FINAL ORDER.

The filing of a petition for reconsideration of the final order shall not supersede or delay the effective date of the final order and said order shall take effect on the date entered by the TAHU, the Commissioner's Designee, or the APD, as designated, and shall continue in effect until such petition shall be granted or until said order shall be stayed, superseded, modified, or set aside in a manner provided by law.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.25 RECONSIDERATION PROCEEDINGS.

(1) The hearing officer, administrative judge or the commissioner's designee who rendered the initial or final order which is the subject of the petition, shall, within twenty (20) days of receiving the petition, enter a written order either: denying the petition; granting the petition and setting the matter for further proceedings; or, granting the petition and issuing a new order, initial or final. If no action has been taken on the petition within twenty (20) days, the petition shall be deemed to have been denied at the expiration of the twenty (20) day period.

(2) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record. No new evidence shall be introduced, unless the party proposing such evidence shows good cause for failure to introduce the evidence in the original proceeding.

Authority: *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*

1200-13-15-.26 CLERICAL MISTAKES.

Prior to any appeal being perfected by either party to Chancery Court, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions, may be corrected by the hearing officer or administrative judge or commissioner's designee at any time, on his/her own initiative or on motion of any party, and after such notice, if any, as the hearing officer or administrative judge or commissioner's designee may require. The entering of a corrected order will not affect the dates of the original appeal time period.

~~***Authority:*** *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*~~

~~**1200-13-15-.27 CODE OF JUDICIAL CONDUCT, DISQUALIFICATION AND SEPARATION OF FUNCTIONS.**~~

~~Hearing officers and administrative judges shall comply with the requirements concerning the code of judicial conduct set out in the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies at Chapter 1360-4-1-.20 and the requirements of T.C.A. §§ 4-5-302 and 4-5-303 concerning disqualification and separation of functions. Commissioner's designees shall also comply with the requirements of T.C.A. §§ 4-5-302 and 4-5-303.~~

~~***Authority:*** *T.C.A. §§4-5-202, 71-5-105, 71-5-109, and Executive Order No. 23.* ***Administrative History:*** *Original rule filed October 29, 2003; effective January 12, 2004.*~~