

Department of State  
Division of Publications  
312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

For Department of State Use Only

Sequence Number: 06-21-13  
Rule ID(s): 5499  
File Date (effective date): 10/21/13  
End Effective Date: 12/18/13

# Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

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

**Rule Type:**

Emergency Rule

**Revision Type (check all that apply):**

Amendments

New

Repeal


**Statement of Necessity:**

On January 1, 2013, federal law and regulations went into effect which require state Medicaid programs to pay certain medical providers an enhanced rate for performing specific medical services during calendar years 2013 and 2014. The provider types covered by this enhanced rate are physicians with a primary specialty designation of family medicine, general internal medicine or pediatric medicine, or with a recognized subspecialty. The specific medical services covered by the requirement are primary care services including evaluation and management, and immunization administration. The required enhanced rate is based upon the Medicare payment rates in effect in 2008.

In order to provide the enhanced payment rates, the Bureau of TennCare was required to amend its State Plan. The State Plan Amendment, SPA Transmittal Number 13-001, was approved by the Centers for Medicare and Medicaid Services on May 29, 2013, with a retroactive effective date of January 1, 2013. With this approval, the Bureau must amend its rules in order to implement the enhanced payments.

T.C.A. § 4-5-208(a)(4) permits an agency to adopt an emergency rule when it is required by an agency of the federal government and the adoption of the rule through ordinary rulemaking procedure might jeopardize the loss of a federal program or funds.

For a copy of these emergency rules contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

  
\_\_\_\_\_  
Darin J. Gordon  
Director, Bureau of TennCare  
Tennessee department of Finance and  
Administration

**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/RuleTitle per row)

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-13-17	TennCare Crossover Payments for Medicare Deductibles and Coinsurance
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-17-.01	Definitions
1200-13-17-.04	Medicare Crossover Payment Methodology

(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>)

Rule 1200-13-17-.01 Definitions is amended by adding a new Paragraph (3) and renumbering the current Paragraph (3) as (4) and subsequent paragraphs renumbered accordingly so as amended the new Paragraph (3) shall read as follows:

- (3) ENHANCED PAYMENT RATE shall mean the payment rate referred to in 42 U.S.C. § 1396a(a)(13)(C). Enhanced payment rates are made only to primary care providers and to providers of vaccine administration services, as defined in these rules. These rates are applicable only for dates of service between January 1, 2013, and December 31, 2014.

Rule 1200-13-17-.01 Definitions is amended by adding new renumbered Paragraphs (19) and (20) and the current Paragraphs (18) and (19) that were renumbered as (19) and (20) are renumbered as (21) and (22) and subsequent paragraphs renumbered accordingly so as amended the new Paragraphs (19) and (20) shall read as follows:

- (19) PRIMARY CARE PROVIDERS shall mean, for purposes of the enhanced payment rate, as defined in these rules, primary care providers practicing in family medicine, general internal medicine, pediatric medicine, and related subspecialists who meet requirements as described in 42 C.F.R. § 447.400(a). In accordance with policies set forth by the Bureau of TennCare, these providers must adequately demonstrate to an MCO or the Bureau of TennCare that they meet the minimum board certification requirements and/or that 60 percent of the services they provide represent the eligible codes identified in these rules as primary care or vaccine administration services.
- (20) PRIMARY CARE SERVICES are services for which enhanced payment rates, as defined in these rules, will be paid for dates of service between January 1, 2013, and December 31, 2014. The procedure codes for these services, as published in the American Medical Association's Current Procedural Terminology (2013 edition), are Evaluation and Management Codes 99201 through 99499, or their successor codes.

Paragraph (23) TENNCARE MAXIMUM FEE renumbered as Paragraph (26) of Rule 1200-13-17-.01 Definitions is amended by adding a sentence at the end of the paragraph so as amended the renumbered Paragraph (26) shall read as follows:

- (26) TENNCARE MAXIMUM FEE shall mean the maximum amount considered by TennCare for reimbursement of a particular Medicare-covered service. The TennCare maximum fee is 85% of the Cigna Medicare fee schedule amount for participating providers that was in effect on January 1, 2008. For Medicare-covered services that were introduced after January 1, 2008, and that therefore had no Medicare fee schedule amount in effect on that date, the TennCare maximum fee is 85% of the Medicare fee schedule amount for the participating providers that was in effect on the date the service was introduced.

Rule 1200-13-17-.01 Definitions is amended by adding new renumbered Paragraphs (29), (30) and (31) and subsequent Paragraph (26) renumbered as (29) is renumbered as (32) so as amended the new Paragraphs (29), (30), and (31) shall read as follows:

- (29) TENNCARE PRIMARY CARE ALLOWABLE shall mean 100% of the designated Medicare Cost-Sharing amounts for primary care services provided by primary care providers as defined in these rules during Calendar Years (CY) 2013 and 2014.
- (30) TENNCARE VACCINATION ADMINISTRATION ALLOWABLE shall mean 100% of the designated Medicare Cost-Sharing amounts for vaccine administration services provided by primary care providers as defined in these rules during Calendar Years (CY) 2013 and 2014.
- (31) VACCINE ADMINISTRATION SERVICES are services for which enhanced payment rates, as defined in these rules, will be paid for dates of service between January 1, 2013, and December 31, 2014. The procedure codes for these services, as published in the American Medical Association's Current Procedural Terminology (2013 edition), are Vaccine Administration Codes 90460, 90461, 90471, 90472, 90473, and 90474 or their successor codes.

Paragraph (1) of Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding the phrase "lesser of (a) billed charges or (b) the" after the words "pay the" so as amended Paragraph (1) shall read as follows:

- (1) On crossover claims for professional services and procedures with dates of service on or after July 1, 2008, TennCare will pay the lesser of (a) billed charges or (b) the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

Paragraph (2) of Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding the phrase "lesser of (a) billed charges or (b) the" after the words "pay the" so as amended Paragraph (2) shall read as follows

- (2) On crossover claims for Medicare Part B pharmacy services provided by pharmacy providers, as defined in these rules, to non-FBDEs with dates of service on or after July 1, 2009, TennCare will pay the lesser of (a) billed charges or (b) the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

Paragraph (3) of Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding the phrase "lesser of (a) billed charges or (b) the" after the words "pay the" so as amended Paragraph (3) shall read as follows

- (3) On crossover claims for Medicare Part B pharmacy services provided by pharmacy providers, as defined in these rules, to FBDEs with dates of service on or after July 1, 2009, TennCare will pay the lesser of (a) billed charges or (b) the TennCare pharmacy allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding new Paragraphs (4) and (5) and the current Paragraph (4) renumbered as (6) and subsequent paragraph renumbered accordingly so as amended Paragraph (4) and (5) shall read as follows:

- (4) On crossover claims for primary care services, as defined in these rules, TennCare will pay an enhanced payment rate for dates of service between January 1, 2013, and December 31, 2014. The enhanced payment rate will be the lesser of (a) billed charges or (b) the TennCare primary care allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.
- (5) On crossover claims for vaccine administration services, as defined in these rules, TennCare will pay an enhanced payment rate for services between January 1, 2013, and December 31, 2014. The enhanced payment rate will be the lesser of (a) billed charges or (b) the TennCare vaccination administration allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

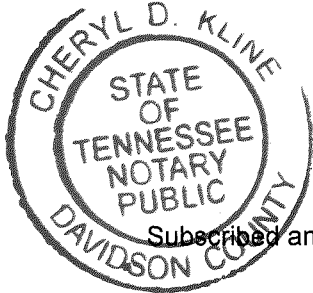
Date: 6/17/2013

Signature: *D. J. Gordon*

Name of Officer: Darin J. Gordon

Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 6/17/13

Notary Public Signature: *Cheryl D Kline*

My commission expires on: 8/23/16

All emergency 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  
6-20-13  
Date

**Department of State Use Only**

Filed with the Department of State on: 6/12/13

Effective for: 180 \*days

Effective through: 12/18/13

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

*Tre Hargett*  
Tre Hargett  
Secretary of State

RECEIVED  
2013 JUN 21 PM 3:37  
SECRETARY OF STATE

## **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 rules are not anticipated to have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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 being amended to assure that they conform to the requirements of Section 1202 of the Affordable Care Act as it relates to payment of crossover claims.

- (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 lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

- (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 persons and entities most directly affected by these rules are the TennCare enrollees and the providers. The governmental entity most directly affected by these Rules is the Bureau of TennCare, 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 Rules were 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 these rules 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;

Donna Tidwell  
Deputy General Counsel

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

Donna Tidwell  
Deputy General Counsel

- (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) 507-6852  
donna.tidwell@tn.gov

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

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GW10113151



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<b>Contact Person:</b>	George Woods
<b>Address:</b>	310 Great Circle Road
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 507-6446
<b>Email:</b>	George.Woods@tn.gov

**Rule Type:**

Emergency Rule

**Revision Type (check all that apply):**

Amendments

New

Repeal

**Statement of Necessity:**

On January 1, 2013, federal law and regulations went into effect which require state Medicaid programs to pay certain medical providers an enhanced rate for performing specific medical services during calendar years 2013 and 2014. The provider types covered by this enhanced rate are physicians with a primary specialty designation of family medicine, general internal medicine or pediatric medicine, or with a recognized subspecialty. The specific medical services covered by the requirement are primary care services including evaluation and management, and immunization administration. The required enhanced rate is based upon the Medicare payment rates in effect in 2008.

In order to provide the enhanced payment rates, the Bureau of TennCare was required to amend its State Plan. The State Plan Amendment, SPA Transmittal Number 13-001, was approved by the Centers for Medicare and Medicaid Services on May 29, 2013, with a retroactive effective date of January 1, 2013. With this approval, the Bureau must amend its rules in order to implement the enhanced payments.

T.C.A. § 4-5-208(a)(4) permits an agency to adopt an emergency rule when it is required by an agency of the federal government and the adoption of the rule through ordinary rulemaking procedure might jeopardize the loss of a federal program or funds.

For a copy of these emergency rules contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

\_\_\_\_\_  
Darin J. Gordon  
Director, Bureau of TennCare  
Tennessee department of Finance and  
Administration

**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/RuleTitle per row)**

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-13-17	TennCare Crossover Payments for Medicare Deductibles and Coinsurance
<b>Rule Number</b>	<b>Rule Title</b>
1200-13-17-.01	Definitions
1200-13-17-.04	Medicare Crossover Payment Methodology

(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>)

Rule 1200-13-17-.01 Definitions is amended by adding a new Paragraph (3) and renumbering the current Paragraph (3) as (4) and subsequent paragraphs renumbered accordingly so as amended the new Paragraph (3) shall read as follows:

(3) ENHANCED PAYMENT RATE shall mean the payment rate referred to in 42 U.S.C. § 1396a(a)(13)(C). Enhanced payment rates are made only to primary care providers and to providers of vaccine administration services, as defined in these rules. These rates are applicable only for dates of service between January 1, 2013, and December 31, 2014.

Rule 1200-13-17-.01 Definitions is amended by adding new renumbered Paragraphs (19) and (20) and the current Paragraphs (18) and (19) that were renumbered as (19) and (20) are renumbered as (21) and (22) and subsequent paragraphs renumbered accordingly so as amended the new Paragraphs (19) and (20) shall read as follows:

(19) PRIMARY CARE PROVIDERS shall mean, for purposes of the enhanced payment rate, as defined in these rules, primary care providers practicing in family medicine, general internal medicine, pediatric medicine, and related subspecialists who meet requirements as described in 42 C.F.R. § 447.400(a). In accordance with policies set forth by the Bureau of TennCare, these providers must adequately demonstrate to an MCO or the Bureau of TennCare that they meet the minimum board certification requirements and/or that 60 percent of the services they provide represent the eligible codes identified in these rules as primary care or vaccine administration services.

(20) PRIMARY CARE SERVICES are services for which enhanced payment rates, as defined in these rules, will be paid for dates of service between January 1, 2013, and December 31, 2014. The procedure codes for these services, as published in the American Medical Association's Current Procedural Terminology (2013 edition), are Evaluation and Management Codes 99201 through 99499, or their successor codes.

Paragraph (23) TENNCARE MAXIMUM FEE renumbered as Paragraph (26) of Rule 1200-13-17-.01 Definitions is amended by adding a sentence at the end of the paragraph so as amended the renumbered Paragraph (26) shall read as follows:

(2623) TENNCARE MAXIMUM FEE shall mean the maximum amount considered by TennCare for reimbursement of a particular Medicare-covered service. The TennCare maximum fee is 85% of the Cigna Medicare fee schedule amount for participating providers that was in effect on January 1, 2008. For Medicare-covered services that were introduced after January 1, 2008, and that therefore had no Medicare fee schedule amount in effect on that date, the TennCare maximum fee is 85% of the Medicare fee schedule amount for the participating providers that was in effect on the date the service was introduced.

Rule 1200-13-17-.01 Definitions is amended by adding new renumbered Paragraphs (29), (30) and (31) and subsequent Paragraph (26) renumbered as (29) is renumbered as (32) so as amended the new Paragraphs (29), (30), and (31) shall read as follows:

29) TENNCARE PRIMARY CARE ALLOWABLE shall mean 100% of the designated Medicare Cost-Sharing amounts for primary care services provided by primary care providers as defined in these rules during Calendar Years (CY) 2013 and 2014.

(30) TENNCARE VACCINATION ADMINISTRATION ALLOWABLE shall mean 100% of the designated Medicare Cost-Sharing amounts for vaccine administration services provided by primary care providers as defined in these rules during Calendar Years (CY) 2013 and 2014.

(31) VACCINE ADMINISTRATION SERVICES are services for which enhanced payment rates, as defined in these rules, will be paid for dates of service between January 1, 2013, and December 31, 2014. The procedure codes for these services, as published in the American Medical Association's Current Procedural Terminology (2013 edition), are Vaccine Administration Codes 90460, 90461, 90471, 90472, 90473, and 90474 or their successor codes.

Paragraph (1) of Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding the phrase "lesser of (a) billed charges or (b) the" after the words "pay the" so as amended Paragraph (1) shall read as follows:

- (1) On crossover claims for professional services and procedures with dates of service on or after July 1, 2008, TennCare will pay the lesser of (a) billed charges or (b) the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

Paragraph (2) of Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding the phrase "lesser of (a) billed charges or (b) the" after the words "pay the" so as amended Paragraph (2) shall read as follows

- (2) On crossover claims for Medicare Part B pharmacy services provided by pharmacy providers, as defined in these rules, to non-FBDEs with dates of service on or after July 1, 2009, TennCare will pay the lesser of (a) billed charges or (b) the TennCare allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

Paragraph (3) of Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding the phrase "lesser of (a) billed charges or (b) the" after the words "pay the" so as amended Paragraph (3) shall read as follows

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Rule 1200-13-17-.04 Medicare Crossover Payment Methodology is amended by adding new Paragraphs (4) and (5) and the current Paragraph (4) renumbered as (6) and subsequent paragraph renumbered accordingly so as amended Paragraph (4) and (5) shall read as follows:

- (4) On crossover claims for primary care services, as defined in these rules, TennCare will pay an enhanced payment rate for dates of service between January 1, 2013, and December 31, 2014. The enhanced payment rate will be the lesser of (a) billed charges or (b) the TennCare primary care allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.
- (5) On crossover claims for vaccine administration services, as defined in these rules, TennCare will pay an enhanced payment rate for services between January 1, 2013, and December 31, 2014. The enhanced payment rate will be the lesser of (a) billed charges or (b) the TennCare vaccination administration allowable, as defined in these rules, less the Medicare paid amount, less any third party liability.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: Darin J. Gordon  
Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

All emergency 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.  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: \_\_\_\_\_

Effective for: \_\_\_\_\_ \*days

Effective through: \_\_\_\_\_

*\* Emergency rule(s) may be effective for up to 180 days from the date of filing.*

\_\_\_\_\_  
Tre Hargett  
Secretary of State

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2013 JUN 21 PM 3:37  
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SECRETARY OF STATE

## **Impact on Local Governments**

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The rules are not anticipated to have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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 being amended to assure that they conform to the requirements of Section 1202 of the Affordable Care Act as it relates to payment of crossover claims.

- (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 lawfully adopted by the Bureau of TennCare in accordance with T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

- (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 persons and entities most directly affected by these rules are the TennCare enrollees and the providers. The governmental entity most directly affected by these Rules is the Bureau of TennCare, 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 Rules were 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;

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

Donna Tidwell  
Deputy General Counsel

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

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Deputy General Counsel

- (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

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Nashville, TN 37243  
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

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GW10113151