

**RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES**

**CHAPTER 1200-08-08
REGULATIONS FOR HOME CARE ORGANIZATIONS**

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1200-08-08-.01 DEFINITIONS.

- (1) Administrator. A person who:
 - (a) Is a licensed physician with at least one (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or
 - (b) Is a registered nurse with at least (1) year supervisory or administrative experience in home health care, hospice care or related health programs; or
 - (c) Has training and experience in health service administration and at least one (1) year of supervisory or administrative experience in home health care, hospice care or related health programs.
- (2) Bereavement counselor. An individual who has at least a bachelor's degree in social work, counseling, psychology, pastoral care, or specialized training or experience in bereavement theory and counseling.
- (3) Board. The Tennessee Board for Licensing Health Care Facilities, established at T.C.A. §§68-11-203.
- (4) Clinical Note. A written, dated and signed notation by a member of the health team who made contact with a patient which contains a description of signs and symptoms, treatment and/or drug given, the patient's reaction, and any changes in physical or mental condition. Clinical notes shall be incorporated into the medical record.
- (5) Commissioner. The Commissioner of the Tennessee Department of Health and/or his/her authorized representative.
- (6) Department. The Tennessee Department of Health.
- (7) Dietary Counselor. A dietitian or nutritionist licensed pursuant to T.C.A. §§ 63-25-101, et seq.
- (8) Drugs. A legend drug which may only be dispensed by a licensed pharmacy pursuant to a physician's prescription or order.
- (9) Duly licensed. Lawfully possessing any license required by state law to practice various professions.
- (10) Home Care Organization. As defined by T.C.A. §§68-11-201(12) "home care organization" means:

(Rule 1200-08-8-.01, continued)

- (a) Any entity which is staffed and organized to provide "home health services", "hospice services" or "home medical equipment services" (as defined by T.C.A. §§68-11-201(15), (18) and (20) and by Rule 1200-48-.01(11), (13) and (18), below) to patients on an outpatient basis in either their regular or temporary place of residence. An entity is a "home care organization" if it does any of the following:
1. Holds itself out to the public as providing home health services, hospice services or home medical equipment services;
 2. Contracts or agrees to deliver home health services, or home medical equipment services;
 3. Accepts, in the organization's name, physician orders for home health services hospice services or home medical equipment services, or;
 4. Accepts responsibility for the delivery of home health services, hospice services or home medical equipment services.
- (b) The absence of one (1) or more of the above factors does not necessarily exclude the entity from the meaning of this definition. If the entity is not included within the previous terms of this definition, the entity shall not be considered to be a "home care organization" solely because it offers to refer individuals who are available for employment by consumers through personal contract or individual agreement to deliver home health services, home medical equipment services or hospice services which is either within the scope of the individual's professional license or is a homemaker service, and which service must be delivered independently of the agency or organization which made the referral.
- (c) The home care organization that holds the license and that develops and maintains administrative controls of home medical equipment branch offices is called the Parent Home Medical Equipment Provider. The parent may also provide services directly. A Branch Home Medical Equipment Provider is defined as one or more locations from which a home care organization provides Home Medical Equipment services. Branch offices of home medical equipment organizations are not required to be separately licensed or charged separate license fees.
- (11) Home Health Service. As defined by T.C.A. §§68-11-201(15) "home health service" means a service provided an outpatient by an appropriately licensed health care professional or an appropriately qualified staff member of a licensed home care organization in accordance with orders recorded by a physician, and which includes one or more of the following:
- (a) Skilled nursing care including part-time or intermittent supervision;
 - (b) Physical, occupational or speech therapy;
 - (c) Medical social services;
 - (d) Home health aide services;
 - (e) Medical supplies and medical appliances, other than drugs and pharmaceuticals, when provided or administered as part of, or through the provision of, the services described in (a) through (d) above; and
 - (f) Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home care organization at a hospital, nursing home facility or

(Rule 1200-08-8-.01, continued)

rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in the individual's home, or which are furnished at such facility while the individual is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

- (12) Home Health and/or Hospice Aide. A person who has completed a total of seventy-five (75) hours of training which included sixteen (16) hours of clinical training prior to or during the first three (3) months of employment and who is qualified to provide basic services, including simple procedures as an extension of therapy services, personal care regarding nutritional needs, ambulation and exercise, and household services essential to health care at home.
- (13) Home Medical Equipment Service. A service provided by any person who sells or rents home medical equipment for delivery to the consumer's place of residence in this state, regardless of the location of the home medical equipment provider.
- (14) Home Medical Equipment Provider. Any person who provides "home medical equipment services".
- (15) Home Medical Equipment. Medical equipment intended for use by the consumer including but not limited to, the following:
- (a) A device, instrument, apparatus, machine, or other similar article whose label bears the statement: "Caution: Federal law requires dispensing by or on the order of a physician";
 - (b) Ambulating assistance equipment other than canes, crutches and/or walkers;
 - (c) Mobility equipment, including wheelchairs, power wheelchairs, scooters, and lift devices/chairs;
 - (d) Rehabilitation seating, including wheelchair cushions and seating systems;
 - (e) Oxygen care equipment and oxygen delivery systems, including concentrators, compressed medical oxygen and liquid oxygen;
 - (f) Respiratory care equipment and respiratory disease management devices, including ventilators, apnea monitors, oxygen, diagnostic equipment, aerosol generators, nebulizers, CPAP, BiPAP, suction machines, and percussors;
 - (g) Rehabilitation environmental control equipment;
 - (h) Ventilator, including electronically operated life sustaining system which performs breathing function for patients;
 - (i) Apnea monitors, including devices that monitor respiratory and heart rate(s);
 - (j) Diagnostic equipment, including oximeters, spirometers, glucose monitors, and end tidal CO₂ monitors;
 - (k) Feeding pumps, including enteral feeding pumps;
 - (l) A bed prescribed by a physician to treat or alleviate a medical condition, including standard/electric hospital beds, pressure reduction beds/overlay mattress systems;
 - (m) Transcutaneous electrical nerve stimulator, including TENS units;

(Rule 1200-08-8-.01, continued)

- (n) Sequential compression devices, including edema reduction pumps; and
 - (o) Neonatal home phototherapy devices used in the treatment of hyperbilirubinemia.
- (16) Home Medical Equipment does not include:
- (a) Medical equipment used or dispensed in the normal course of treating patients by hospitals and nursing facilities, other than medical equipment delivered or dispensed by a separate unit or subsidiary corporation of a hospital or nursing facility or agency that is in the business of delivering home medical equipment to an individual's residence;
 - (c) Canes, crutches, walkers, and bathtub grab bars;
 - (d) Medical equipment provided through a physician's office incident to a physician's service;
 - (e) Equipment provided by a pharmacist which is used to administer drugs or medicine that can be dispensed only by a pharmacist; or
 - (f) Enteral and parenteral equipment provided by a pharmacist.
- (17) Homemaker Service. A service in the home to maintain independent living which does not require a physician's order. An agency does not have to be licensed as a home care organization to provide such services.
- (18) Hospice Services. A coordinated program of care, under the direction of an identifiable hospice administrator, providing palliative and supportive medical and other services to hospice patients and their families in the patient's regular or temporary place of residence. Hospice services shall be provided twenty-four (24) hours a day, seven (7) days a week.
- (19) Hospice Care Clinical Coordinator. A person identified as being responsible for the clinical management of all aspects of a hospice program. The hospice clinical coordinator must have at least one (1) year of supervisory experience in hospice or home health care and be either a:
- (a) licensed physician, or a
 - (b) registered nurse.
- (20) Licensed Practical Nurse (L.P.N.). A person who is duly licensed as such by the Tennessee Board of Nursing.
- (21) Licensee. The person or body to whom a license is issued. The licensee is held responsible for compliance with all rules and regulations.
- (22) Life Support Equipment. A term synonymous with "life support systems" which for purposes of the licensure exemption allowed for licensed practical nurses (contained at T.C.A. §§68-11-201(15)(H)) means any and all of the following:
- (a) Any type of mechanical ventilator.
 - (b) Continuous Positive Airway Pressure or Bi-Positive Airway Pressure devices.
 - (c) Cardiopulmonary monitors.
 - (d) All oxygen delivery devices except nasal cannula.

(Rule 1200-08-8-.01, continued)

- (23) Manager. Has training and experience in health services management and at least one (1) year of supervisory or management experience in home medical equipment or social work experience in a health care setting.
- (24) Master Social Worker. A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has one (1) year of social work experience in a health care setting.
- (25) Medical Record. The medical record shall contain, at a minimum, documented facts which:
- (a) Provide the basis for planning and implementing the patient's care program;
 - (b) Reveal the patient's progress and response to treatment;
 - (c) Serve as the record of the communication between the professional groups responsible for the patient's care;
 - (d) Serve as a repository of data which can be used to review and evaluate the care rendered the patient and thus serve as a tool for staff education; and
 - (e) Serve as the basis for legal protection for the patient and all concerned with the care of the patient.
- (26) Palliative. The reduction or abatement of pain or troubling symptoms, by appropriate coordination of all elements of the hospice care team, to achieve needed relief of distress.
- (27) Patient. Includes, but is not limited to, those suffering from an acute or chronic illness or injury or who are crippled, convalescent or infirm or in need of obstetrical, surgical, medical, nursing or supervisory care.
- (28) Physician.
- (a) A person who is duly licensed in Tennessee either to practice medicine by the State Board of Medical Examiners or to practice osteopathy by the State Board of Osteopathic Examiners.
 - (b) A physician or osteopath who is not licensed to practice medicine in Tennessee but is duly licensed to practice medicine in a state contiguous to Tennessee may refer a patient residing in this state to a home care organization duly licensed under these regulations, however, nothing in this part shall be construed as authorizing an unlicensed physician or osteopath to practice medicine in violation of T.C.A. §§ 63-6-201 or 63-9-104, respectively; and such a physician or osteopath shall have previously provided treatment to that patient, and shall have had an ongoing relationship with the person for whom the referral is to be made.
- (29) Progress Note. A progress note is a written notation, dated and signed by a member of the health team to document a change in the patient's medical status. A progress note must be incorporated in the medical record.
- (30) Registered Nurse (R.N.). A person duly licensed as such by the Tennessee Board of Nursing.
- (31) Representative. An individual who has been authorized under state law (i.e., legal guardian, or attorney in fact under a durable power of health care pursuant to T.C.A. §§34-6-201, et seq.) to

(Rule 1200-08-8-.01, continued)

make medical decisions on behalf of a terminally ill individual who is mentally or physically incapacitated.

- (32) Residential Hospice. A licensed homelike residential facility which provides hospice services. A residential hospice shall not provide hospice services to any person other than a hospice patient.
- (33) Shall or Must. Where the word "shall" or "must" is used, compliance is mandatory.
- (34) Social Work Assistant. A person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has at least one (1) year of social work experience in a health care setting.
- (35) Social Worker. A person who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education and has at least one (1) year of social work experience in a health care setting,
- (36) Spiritual Counselor. A person who has met the requirements of a religious organization to serve the constituency of that religious organization.
- (37) Supervision. Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The supervisor must be on the premises if the person is not a licensed or certified assistant, unless otherwise provided in accordance with these regulations.
- (38) Terminally Ill. An individual with a medical prognosis that his or her life expectancy is six (6) months or less if the illness runs its normal course.
- (39) Therapist. A certified respiratory therapy technician pursuant to T.C.A. §§63-6-407; a licensed physical therapist pursuant to T.C.A. §§63-13-301, et seq.; an occupational therapist pursuant to T.C.A. §§63-13-201, et seq.; a respiratory care therapist pursuant to T.C.A. §§63-6-406; a speech pathologist and/or audiologist pursuant to T.C.A. §§63-17-101, et seq.; a licensed psychologist pursuant to T.C.A. §§63-11-201, et seq.; or a social worker pursuant to T.C.A. §§63-23-101, et seq.
- (40) Volunteer. An individual who agrees to provide services to a hospice care patient and/or family member(s), without monetary compensation, in either direct patient care or an administrative role and supervised by an appropriate hospice care employee.
- (41) Written Policy. Whenever the rules and regulations of this Chapter require that a licensee develop a written policy, plan, procedure, technique, or system concerning a subject, the licensee shall develop the required policy, maintain it and adhere to its provisions. A home care organization which violates a required policy also violates the regulation establishing the requirement. Licensed home care organizations must follow all policies, plans, procedures, techniques, or systems whose development is required by these rules.

Authority: T.C.A. §§4-5-202, 68-11-201, 4-5-208, 68-11-202, 68-11-204, and 68-11-209.
Administrative History: Original rule filed December 1, 1975; effective December 30, 1975. Amended and new rule filed July, 22, 1976; effective August 21, 1976. Repeal and new rule filed February 9, 1989; effective March 26, 1989. Amendment filed March 4, 1993; effective April 18, 1993. Amendment filed June 9, 1994; effective August 23, 1994. Repeal and new rule filed April 25, 1996; effective July 9, 1996. Amendment filed December 13, 1996; effective February 26, 1997. Amendment filed May 28, 1998; effective August 11, 1998.

(Rule 1200-08-08-.02, continued)

1200-08-08-.02 APPLICATION FOR A LICENSE.

- (1) The Board in its discretion, shall be authorized to issue licenses to the licensees in such form as it may deem necessary.
- (2) Any entity, in order to lawfully establish, conduct, operate or maintain a home care organization in Tennessee, shall obtain a license from the Department, upon the approval and recommendation of the Board, in the following manner

- (a) The applicant shall request that the Department conduct a survey of the organization to determine whether the minimum standards for a home care organization are met.
- (b) If the home care organization meets the minimum standards for a home care organization, the applicant for a license shall furnish, on a form provided by the Department, information attesting that the applicant will conduct the home care organization in accordance with the minimum standards and regulations adopted by the Board and the Department. Such attestation shall be given in the form of a sworn affidavit, provided as part of the application, and shall be a prerequisite to licensing.

The submission of false information by any applicant in said affidavit shall constitute grounds for the denial or revocation of a license. The use of subterfuge or other evasive means such as filing for a license through a second party when an individual has been disqualified for licensure shall constitute grounds for the denial or revocation of a license.

- (c) The Board may approve the issuance of a license upon the application without further evidence; or in its discretion, it may have a hearing on the application and conduct its own investigation, to determine whether or not a license should be granted.
- (d) If, after a hearing, the Board finds that the applicant complies and will in the future comply with the provisions of the law and the minimum standards and regulations promulgated herein, the Board shall approve the, issuance of a license.
- (e) If, after a hearing, the Board finds that a license should not be granted, it shall so notify the applicant. Any licensee, or applicant for a license, aggrieved by the action of the Board or the Department may appeal from such action to the chancery court as provided for by T.C.A. §§68-11-206, 68-11-208 and 4-5-322.

(3) License Information

- (a) Every home care organization, applying for a license, shall designate a distinctive name for the organization. The name of a home care organization shall not be changed without first notifying the Department in writing.
- (b) A license shall be issued only to the home care organization, for a designated location and to the person or entity named in the application for licensure. Licenses are not transferable or assignable.
- (c) A separate license shall be required for each home care organization.
- (d) The home care organization shall maintain an office with a working telephone and be staffed during normal business hours.
- (e) Any change in services provided by the home care organization shall be reported to the Department within fifteen (15) days of the implementation of such services.

(Rule 1200-08-08-.02, continued)

- (f) A home care organization shall have a duly qualified administrator or manager (home medical equipment) accessible during normal operating hours. Any change of administrator or manager (home medical equipment) shall be reported to the Department within fifteen (15) days.
- (g) An administrator shall serve no more than one (1) licensed home care organization, unless the administrator is over a home care organization which provides hospice, home health and/or home medical equipment at the same location.
- (h) The license shall be conspicuously posted in the home care organization.
- (i) The Department shall be notified thirty (30) days prior to any change of address and/or location.
- (j) The issuance of an application form is in no way a guarantee that the completed application will be acceptable or that a license will be issued by the Department.
- (k) Annual Report. A yearly statistical report, the "Joint Annual Report of Home Care Organizations", shall be submitted to the Department. The forms are mailed to each home care organization by the Department each year. The forms must be completed and returned to the Department as requested.

(4) License Fee

- (a) Each home care organization making application for license, except those operated by the U.S. Government or the State of Tennessee, shall pay annually to the Board for Licensing Health Care Facilities a fee of four hundred dollars (\$400). The fee shall be submitted with the application.
- (b) Any applicant who files during the fiscal year must pay the full license fee. When the Board declines to issue a license to an applicant the full license fee paid will be refunded. No fee will be refunded when a license is used less than the fiscal year.

(5) Expiration and Renewal of License

- (a) A license to operate a home care organization is issued on a fiscal year basis beginning July 1st and expiring the following June 30th.
- (b) The renewal of a license shall be contingent upon evidence of continued compliance with all minimum standards and regulations.
- (c) An application form for the renewal of the license will be mailed by the Department to each home care organization prior to renewal. The renewal application form shall be completed and returned with the required license fee as instructed by the Department before July 1. The organization owner, administrator, or manager (home medical equipment) shall make application for initial licensing and application for relicensing annually. Late applicants will be required to appear before the Board to apply for renewal.
- (d) Should the licensee fail to renew its license prior to the expiration date, yet within sixty (60) days after the expiration date, then the licensee shall pay a late renewal penalty fee of one hundred dollars (\$100.00) per month for each month or fraction of a month that renewal is late.

(Rule 1200-08-08-.02, continued)

- (e) In the event that a licensee fails to renew a license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:
 - 1. a completed application for licensure;
 - 2. the license fee provided in rule 1200-08-08-.02(4); and
 - 3. any other information required by the Health Services and Development Agency.
- (f) Upon reapplication, the licensee shall submit to an inspection of the facility by Department of Health surveyors.
- (g) Upon change of ownership the existing license is terminated. The new owner is required to submit to the Department an application with the licensing fee, be surveyed and meet the applicable standards and regulations, and be approved for a license. Any change of ownership shall be reported to the Department and a new application for licensure submitted at least thirty (30) days before the change is to be implemented. Violation of such shall result in the facility having to appear before the Board.
- (h) Change of ownership or controlling ownership must be reported to the Health Care Facilities Licensing Section a minimum of thirty (30) days prior to ownership changes to allow for an on-site inspection by appropriate authorities. An application and fee must be received by the Department before a license will be issued.
 - 1. For the purpose of licensing, the "owner" of a home care organization has the ultimate responsibility for the operation of the organization, including the final authority to make or control operational decisions and legal responsibility for the business management. A "change of ownership" occurs whenever this ultimate legal authority to control the activities and policies of the home care organization is transferred to another individual, group, or legal entity.
 - 2. A "change of ownership" also occurs whenever there is a change in the legal form under which the controlling entity is organized.
 - 3. Transactions constituting a change of ownership include, but are not limited to, the following:
 - (i) Sale or donation of the organization's legal title;
 - (ii) Lease of the entire organization's real and personal property;
 - (iii) A sole proprietor becomes a member of a partnership or corporation, which succeeds the proprietor as the new operator;
 - (iv) Dissolution of a partnership;
 - (v) One partnership is replaced by another through the removal, addition or substitution of a partner;
 - (vi) A general partnership becomes a limited partnership, or a limited partnership becomes general;
 - (vii) Two (2) or more corporations merge and the originally-licensed corporation does not survive;

(Rule 1200-08-08-.02, continued)

- (viii) Corporations consolidate;
 - (ix) A non-profit corporation becomes a general corporation, or a for-profit corporation becomes non-profit;
 - (x) Transfers between levels of government.
4. Transactions which *do not* constitute a change of ownership include, but are not limited to, the following:
- (i) Changes in the membership of a corporate board of directors or board of trustees;
 - (ii) Two (2) or more corporations merge and the originally-licensed corporation survives;
 - (iii) Changes in the membership of a non-profit corporation;
 - (iv) Transfers between departments of the same level of government;
 - (v) Corporate stock transfers or sales, even when a controlling interest.
 - (vi) Management agreements are generally not changes of ownership if the former owner continues to retain policy responsibility, must approve or concur in decisions involving the home care organization's operation, and retains legal liability for some claims that may be filed against the organization. However, if these ultimate legal responsibilities, authorities and liabilities are surrendered and transferred from the former owner to the new manager, then a change of ownership has occurred.
 - (vii) Sale/lease-back agreements will not be treated as changes in ownership if the lease involves the organization's entire real and personal property and if the identity of the lessee, who will continue the operation, retains the exact same legal form as the former owner.
- (6) Suspension or Revocation of License - The Board may suspend or revoke a license issued hereunder on any of the following grounds, in accordance with the procedures outlined in T.C.A. §§68-11-207.
- (a) Violation of any of the provisions of T.C.A. §§68-11-201, et seq., or of the rules, minimum standards and regulations contained in this Chapter, 1200-08-08.
 - (b) Permitting, aiding or abetting the commission of any illegal act in such organizations.
 - (c) Conduct or practice found by the Board to be detrimental to the welfare of the patients of such organizations.
 - (d) Fraudulent practice in obtaining a license.

Any licensee or applicant for a license, aggrieved by a decision or action of the Department or Board, pursuant to this Chapter, may request a hearing before the Board. The proceedings and judicial review of the Board's decision shall be in accordance with the Uniform Administrative Procedures Act, T.C.A §§4-5-301, et seq.

(Rule 1200-08-08-.02, continued)

- (7) No organization shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the Board, the Department, Adult Protective Services, the Comptroller of the State Treasury, the Long Term Care Ombudsman, or other agency having jurisdiction. An organization shall neither retaliate, nor discriminate because of information lawfully provided to these authorities, because of a person's cooperation with them, or because a person is subpoenaed to testify at a hearing involving one of these authorities.
- (8) The organization shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the organization. The organization shall protect the civil rights of patients under the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and under the Americans with Disabilities Act of 1990.

Authority: T.C.A. §§4-5-202, 68-11-202, 68-11-204, 68-11-206 through 68-11-209, § 68-11-209(a)(1), § 68-11-210, Chapter 846 of the Public Acts of 2008, §1, T.C.A. §68-11-206(a)(5) [effective January 1, 2009]. **Administrative History:** Original rule filed December 1, 1975; effective December 30, 1975. Repeal and new rule filed February 9, 1989; effective March 26, 1989. Repeal and new rule filed April 25, 1996; effective July 9, 1996. Amendment filed May 28, 1998; effective August 11, 1998. Public necessity rule filed April 29, 2009; effective through October 11, 2009. Emergency rules filed October 9, 2009; effective through April 7, 2010.

1200-08-08-.03 REPEALED.

Authority: T.C.A. §§4-5-208, 68-11-202 and 68-11-209. **Administrative History:** Original rule filed December 1, 1975; effective December 30, 1975. New rule filed July 22, 1976; effective August 21, 1976. Amendment filed February 26, 1985; effective March 28, 1985. Amendment filed December 30, 1986; effective February 13, 1987. Repeal and new rule filed February 9, 1989; effective March 26, 1989. Repeal and new rule filed April 25, 1996; effective July 9, 1996. Amendment filed December 10, 1996; effective February 23, 1997. Amendment filed December 13, 1996; effective February 26, 1997. Repeal filed May 31, 2000; effective August 14, 2000.

1200-08-08-.04 REPEALED

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202 and 68-11-209. **Administrative History:** Original rule filed December 1, 1975; effective December 30, 1975. Repeal and new rule filed February 9, 1989; effective March 26, 1989. Repeal and new rule filed April 25, 1996; effective July 9, 1996. Repeal filed April 17, 2000; effective July 1, 2000.

1200-08-08-.05 PROCEDURES FOR THE WITHHOLDING OF RESUSCITATION SERVICES

- (1) Purpose. To provide procedures for Health Care Facilities to follow with respect to the withholding or withdrawing of resuscitative services from patients, and to assure that such procedures are followed by all Health Care Facilities, while maintaining the rights of the patient.
- (2) Applicability. These regulations shall be applicable to all Health Care Facilities licensed by the Board for Licensing Health Care Facilities pursuant to T.C.A. §§68-11-202.
- (3) Definitions. The terms used in these regulations shall have the following meanings, unless specifically indicated to the contrary:
 - (a) Treating Physician. The duly licensed physician selected by or assigned to the patient and who has the primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such physician may be deemed to be the "treating physician."

(Rule 1200-08-08-.05, continued)

- (b) Cardiopulmonary Resuscitation (CPR) - The administering of any means or device to restore or support resuscitative functions in the patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirators, defibrillation, the administration of drugs and/or chemical agents intended to restore resuscitation, or otherwise, which is intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.
 - (c) Do Not Resuscitate (DNR) Order - An order entered by the patient's treating physician in the patient's medical record which states that in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.
 - (d) Health Care Facility - Any facility providing health care-related services to patients which is subject to licensure by the Tennessee Board for Licensing Health Care Facilities pursuant to T.C.A. §§68-11-202 or any successor statute hereto.
 - (e) Competent - A patient who has decision-making capacity.
 - (f) Incompetent - A patient who is not competent having been determined to be so by the proper legal authorities, or having been determined to be incompetent by the attending physician and the medical director, or the attending physician and another physician.
 - (g) Legal Guardian - Any person authorized to act for the patient pursuant to any provision of T. C.A. Title 34, including but not limited to, a guardian as defined in T.C.A. §§34-4-103(3) or 34-5-102(4) , or any successor statute thereto.
 - (h) Medically Futile Treatment - Resuscitation efforts should be considered futile if they cannot be expected either to restore cardiac or respiratory function to the patient or to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the surrogate expresses the goals of the patient.
 - (i) Medical Record - Any record concerning the patient as defined in T.C.A. §§68-11-302 or any successor statute thereto; provided, however, the term "hospital" shall be read to mean any health care facility.
 - (j) Patient - Any person receiving care or treatment in or from a health care facility.
 - (k) Resuscitative Services - See Cardiopulmonary Resuscitation.
 - (l) Surrogate - The patient's legal guardian, or if none, a competent adult most likely to know the wishes of the patient with respect to the possible withholding of resuscitative services or withdrawal of resuscitative services.
- (4) Patient Rights.
- (a) Each patient has a right to self-determination, which encompasses the right to make choices regarding life-sustaining treatment (including resuscitative services). This right of self-determination may be effectuated by an advance directive.
- (5) Policies and Procedures.

(Rule 1200-08-08-.05, continued)

- (a) Each home care organization shall maintain and establish policies and procedures which allow for the withholding of cardiopulmonary resuscitative measures from individual patients. The procedures for determining when the services may be withheld must respect the patient's rights of self-determination. The organization must inform the patient of the policies and procedures upon admission or at such time as may be appropriate.
- (b) All patients shall be presumed as having consented to cardiopulmonary resuscitation unless there is documentation in the medical record that the patient has specified that a DNR order be written. Do not resuscitate orders may be written to exclude any portion of the cardiopulmonary resuscitation measures deemed to be unacceptable.
- (c) In the case of an incompetent patient who has appointed an attorney in fact to act on his or her behalf pursuant to an advance directive, documentation in the medical record must reflect that the attorney in fact has specified that a DNR order be written.
- (d) In the case of an incompetent patient who has not appointed an attorney in fact to act on his or her behalf pursuant to an advance directive, documentation in the medical record must reflect that the patient's surrogate and the patient's treating physician have mutually specified that a DNR order be written.
- (e) For a patient incompetent upon admission who has not appointed an individual to act on his or her behalf pursuant to an advance directive, the organization should obtain from the family or responsible party the name of the surrogate who will be responsible, along with the treating physician, for deciding on the issuance of a DNR order.
- (f) All DNR orders must be accompanied by documentation in the medical record stating when the decision was made and who was involved in the decision making process.
- (g) CPR may be withheld from the patient if in the judgment of the treating physician an attempt to resuscitate would be medically futile. Withholding and withdrawal of resuscitative services shall be regarded as identical for the purposes of these regulations
- (h) Procedures for periodic review of DNR orders must be established and maintained. The organization must have procedures for allowing revocation or amending DNR orders by the patient, the attorney in fact, the surrogate, or treating physicians. Such change will be documented in the medical record.
- (i) Any treating physician who refuses to enter an order not to resuscitate in accordance with provisions set forth above, or to comply with an order not to resuscitate, shall promptly advise the patient, the attorney in fact, or the surrogate of this decision. The treating physician shall then 1) make a good faith attempt to transfer the patient to another physician who will honor the DNR order, and 2) permit the patient to obtain another physician.
- (j) Each organization shall establish, and set forth in writing, a mediation process to deal with any dispute regarding orders not to resuscitate. This mediation process, which should utilize patient advocates, ombudsman, clergy, social workers, physicians, ethicists, or other existing resources, shall mediate in the event of disputes arising from the withholding of resuscitative services.

Authority: T.C.A. §§4-5-202, 68-11-202, 68-11-209, and 68-11-224. **Administrative History:** Original rule filed December 1, 1975; effective December 30, 1976. Repeal and new rule filed February 9, 1989; effective March 26, 1989. Repeal and new rule filed April 25, 1996, effective July 9, 1996.

1200-08-08-.06 REPEALED.

(Rule 1200-8-8-.06, continued)

Authority: T.C.A. §§ 4-5-202, 68-11-202, and 68-11-209. **Administrative History:** Original rule filed May 28, 1998; effective August 11, 1998. Repeal filed August 24, 2000; effective November 7, 2000.