G.O.C. STAFF RULE ABSTRACT

AGENCY/BOARD/COMMISSION:	Tennessee Department of Children's Services
DIVISION:	Child Protective Services
SUBJECT:	Emergency Rule: Classification and Review of Reports of Child Abuse/Neglect and Due Process Requirements for Release of Child Abuse/Neglect Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-208, 4-5-226(b)(2), 4-5-313, 37-1-409, 37-1-612, 37-1-616, 37-5-101, 37-5-105, 37-5-106, 37-5-112(a), and 49-5-413(e)
EFFECTIVE DATES:	July 19, 2013 through January 15, 2014
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This emergency rule is required by Public Chapter 381, enacted by the General Assembly and signed by the Governor on May 14, 2013, which creates Tennessee Code Annotated § 49-5-413(e). This new subsection (e) authorizes the emergency rule and states that DCS "shall promulgate [the rule] within 60 days of [the legislation] becoming law." This emergency rule repeals and replaces Chapter 0250-07-09 in its entirety; however, the creation of Rule 0250-7-9-.03 is the only substantive change, with the other changes reflecting a subsequent renumbering of the previous rules in this chapter. Rule 0250-7-9.03 applies to the release of child abuse and neglect investigation information to covered educational entities relative to any person who is employed or offered employment with a covered educational entity. The rule identifies requirements and procedures for due process and notification by the department of children's services.

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)

This rule amendment is not expected to have any impact on local governments.

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Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Department of Children's Services
Division:	Child Protective Services
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Rule Type:
x Emergency Rule

Revision Type (check all that apply):
___ Amendment
X New
X Repeal

Statement of Necessity:

Pursuant to T.C.A § 37-5-105, 37-1-409, and 37-1-612, the Commissioner of the Department of Children's Services (DCS) or the Commissioner's designee has the power to make and adopt rules, regulations and policies for the government, management and supervision of DCS and to set out procedures for disclosure of information from child abuse investigations consistent with state law.

This emergency rule is required by Tenn. Code Ann. § 49-5-413(e), enacted by the Legislature and signed by the Governor on May 14, 2013. The statute authorizes this emergency rule and requires that DCS "shall promulgate" within 60 days of the statute becoming law. Moreover, due to the immediate danger to the public safety and welfare and the length of time necessary to complete the rulemaking process, these rules are necessary for DCS to immediately establish procedures for the release of child abuse and neglect information to local educational agencies (LEAs) to ensure a hiring process that is safe for children.

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)

Chapter Number	Chapter Title
0250-07-09	Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records

Rule Number	Rule Title
0250-07-09-.01	Definitions
0250-07-09-.02	Scope of Rules
0250-07-09-.03	Releases to Covered Educational Entities
0250-07-09-.04	Prohibited Releases
0250-07-09-.05	When Rights Under This Chapter Attach
0250-07-09-.06	Standards and Criteria for Review of Classification of Reports of Child Abuse/ Neglect as "Indicated"
0250-07-09-.07	Right to Notice and Opportunity for Formal Review
0250-07-09-.08	Alleged Perpetrators with Current Access to Children; Emergency Notification
0250-07-09-.09	Right to Notice and Opportunity for Administrative Hearing
0250-07-09-.10	Stay of Administrative Proceedings
0250-07-09-.11	Conduct of the Administrative Hearing
0250-07-09-.12	Evidence; Standard of Proof at the Administrative Hearing

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RULES
OF THE
TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES
CHILD PROTECTIVE SERVICES

CHAPTER 0250-7-9
CLASSIFICATION AND REVIEW OF REPORTS OF CHILD ABUSE/NEGLECT
AND
DUE PROCESS PROCEDURES FOR RELEASE OF CHILD ABUSE/NEGLECT RECORDS

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0250-7-9-.01	Definitions	0250-7-9-.07	Alleged Perpetrators with Current Access to Children; Emergency Notification
0250-7-9-.02	Scope of Rules	0250-7-9-.08	Right to Notice and Opportunity for Administrative Hearing
0250-7-9-.03	Prohibited Releases	0250-7-9-.09	Stay of Administrative Proceedings
0250-7-9-.04	When Rights Under this Chapter Attach	0250-7-9-.10	Conduct of Administrative Hearing
0250-7-9-.05	Standard and Criteria for Review of Classification of Reports of Child Abuse/Neglect as "Indicated"	0250-7-9-.11	Evidence; Standard of Proof at the Administrative Hearing
0250-7-9-.06	Right to Notice and Opportunity for Formal File Review		

0250-7-9-.01 DEFINITIONS.

(1) "Abuse" exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker. Tenn. Code Ann. §37-1-102(b)(1)

(2) "Adult" means any person eighteen (18) years of age or older. Tenn. Code Ann. §37-1-102(b)(3)

(3) "Child" means (A) A person under the age of eighteen (18) years of age.

(4) "Child sexual abuse" means:

(a) The commission of any act involving unlawful sexual abuse, molestation, fondling or carnal knowledge of a child that constitutes a criminal offense under Tennessee law; or

(b) One (1) or more of the following acts:

1. Any penetration, however slight, of the vagina or anal opening of one (1) person by the penis of another person, whether or not there is the emission of semen;

2. Any contact between the genitals or anal opening of one (1) person and the mouth or tongue of another person;

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3. Any intrusion by one (1) person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;

4. The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that it shall not include:

   (I) Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or

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   (II) Acts intended for a valid medical purpose;

5. The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;

6. The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

   (i) Solicit for or engage in prostitution; or

   (ii) Engage in an act prohibited by Tenn. Code Ann. §39-17-1003;

(c) For the purposes of the reporting, investigation, and treatment provisions of Tenn. Code Ann. §37-1-603-- 37-1-615 "child sexual abuse" also means the commission of any act specified in subdivision Tenn. Code Ann. § 37-1-602(a)(3) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child's home, other person responsible for the care and custody of the child. Tenn. Code Ann. §37-1-602(a)(3)

(5) "Department" means the Tennessee Department of Children's Services.

(6) "Neglect" means a child: (A) Who is without a parent, guardian or legal custodian; (B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity,

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immorality or depravity is unfit to properly care for such child; (C) Who is under unlawful or -improper care, supervision, custody or restraint by any person, corporation, agency, association,-institution, society or other organization or who is unlawfully kept out of school; (D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child; (E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law; (F) Who is in such conditions of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; (G) Who is suffering from abuse or neglect; (H) Who has been in the care and control of an agency or person who is not related to such child by blood or marriage for a continuous period of eighteen (18) months or longer in the absence of a court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; or (I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity. Tenn. Code Ann. §37-1-102(b)(12)

(7) "Commissioner's designee" means the person designated by the Commissioner of the Tennessee Department of Children's Services to act pursuant to this rule.

(8) "Child care agency" means a place or facility, regardless of whether it is currently licensed, that is operated as a "family child care home", a "group child care home", a "child care center", or a "drop-in center", or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day. Tenn. Code Ann. §71-3-501.

(9) "Indicated" means the classification assigned to an individual found to be a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect as the result of investigation of a report of abuse. Tenn. Code Ann. §37-1-406(i)

(10) "Regional General Counsel" means the supervising attorney for one of the regional DCS offices.

(11) "Severe child abuse" means (A) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death; (B) Specific

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brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct; (C) The commission of any act towards the child prohibited by Tenn. Code Ann. §§ 39-13-502 – 39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from the omission of any such act towards the child; or (D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in Tenn. Code Ann. § 39-17-408(d)(2), is occurring. Tenn. Code Ann §37-1-102(b)(21)

(12) "Record" includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, or electronic mails.

(13) "Formal File Review" means the review established pursuant to 42 U.S.C. § 5106a(b)(2)(A)(xv)(II) that is available to an individual whom the Department identifies or proposes to identify as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The Department shall use a formal file review as the initial form of due process when the information regarding the report and identity of a perpetrator must be released to any organization or individual and shall also afford the right to a hearing as provided in Rule 0250-7-9-.~~07~~ 08.

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.10 filed and effective March 25, 1999. Repeal and new rules filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.02 SCOPE.OF RULES.

(1) These Rules shall apply to all indicated cases of child abuse/neglect.

(2) These Rules establish procedures to review indicated cases and to release the identity and other related information of a perpetrator in "indicated" reports of abuse, severe child abuse, child sexual abuse, or neglect to organizations or persons.

(3) A release pursuant to these Rules shall be for purposes of protecting children from further abuse, severe child abuse, child sexual abuse, or neglect and for purposes directly connected with the administration of Tenn. Code Ann. §§37-1-401 et seq.; 37-1-601 et seq.; 49-1-1101 et seq. and 71-3-501 et seq.

(4) This rule shall apply to any release of information to the Department of Health in compliance with Tenn. Code Ann. §68-11-1004(b)(2). Prior to such release, the individual shall have the

right to an administrative hearing pursuant to these rules.

right to an administrative hearing pursuant to these rules.

(5) These Rules shall not apply when the Department intends to release or has released any information about an individual who is an alleged perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any of the following:

(a) any state(s) or federal law enforcement agency(ies) investigating a report of known or suspected child abuse or neglect or any crimes involving children;

(b) any state(s) District Attorney, Attorney General, or United States Attorney(s) or their authorized assistants, of the judicial districts or agencies involved in investigating or prosecuting crimes against children;

(c) any state(s) or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;

(d) treatment professionals treating the child, his or her family, or the perpetrator;

(e) in-house requests by employees of the Department for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws of the State of Tennessee including disclosure to other individuals for purposes directly connected with the administration of Title 37, Chapter 1, Parts 4 and 6 or Title 71, Chapter 3, Part 5, of the Tennessee Code Annotated, other than disclosure to the employers, or licensing authority other than the Department;

(f) any state(s) or federal social service or other agencies investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;

(g) any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;

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(h) to the court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer for the purpose of protecting a child or children from physical or severe child abuse, neglect, or child sexual abuse, except in such situation when such court, administrative hearing, board, or hearing officer, other than the Department of Children's Services, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer;

(i) any release of information to the Departments of Education or Human Services pursuant to Tenn. Code Ann. §§ 37-5-512(a)(2) and (3) regarding an individual who is the subject of an ongoing or a completed investigation of abuse, severe child abuse, child sexual abuse, or neglect by the Department may be released to the Departments of Education and Human Services.

1. Any further release of information by the Departments of Education or Human Services of a finding by the Department that an individual has been classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall occur according to the procedures established by these Rules.; or

(j) Any release to a foster care agency contractor of the Department for purposes of determining whether a child in the Department's custody should be placed with an individual.

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.10 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.03 RELEASES TO COVERED EDUCATIONAL ENTITIES

(1) This rule shall apply only to child abuse and neglect investigation information mandated by Tenn. Code Ann. § 49-5-413(e) to be released to the department of education, any local board of education, and any LEA (collectively "covered educational entities") relative to any individual who is currently employed by or conditionally offered employment with a covered

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(Rule 0250-7-9-.03, continued)

educational entity (such individual to be referred to as a "covered individual"), in which case this rule's procedures apply notwithstanding any language to the contrary contained elsewhere within these rules.

(2) The Department shall offer the due process procedures set out in 0250-7-9-.05(1), including the opportunity for a hearing pursuant to 0250-7-9-.09, to any covered individual who has ever been found by the Department to have committed abuse or neglect and who has not previously waived or exhausted his or her due process rights to a hearing. When the covered individual's due process rights have been waived or fully concluded, the Department shall disclose its final finding to any relevant covered educational entity.

(3) In the case of any covered individual whose investigation has not been concluded or any covered individual whose due process rights have not yet been offered or are otherwise pending, the Department shall conduct an emergency file review pursuant to 0250-7-9-.07. If the emergency file review results in a finding that the covered individual poses an immediate threat to the health, safety, or welfare of children, the Department shall disclose that threat to the relevant covered educational entity.

(4) If the Department's proceedings under these rules have been stayed pursuant to Rule 0250-7-9-.10 due to pending criminal charges against a covered individual, the Department shall notify the covered educational entity of the pending criminal charge.

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0250-7-9-.03 .04. PROHIBITED RELEASES.

(1) Any report of abuse, severe child abuse, child sexual abuse, or neglect is confidential pursuant to Tenn. Code Ann. §§37-1-409(a)(1) and 37-1-609(a).

(2) Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor.

(3) Until the affected individual has exhausted all reviews permitted by these Rules, the Department shall not release any information from its records to any organization or person for purposes of preemployment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect.

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(4) Until the affected individual has exhausted all reviews permitted by these Rules, the Department shall not release any information from its records to identify any individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any organization or person that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.

(5) If the Department does not begin procedures to release the identity and other related information of a perpetrator in an "indicated" report of abuse, severe child abuse, child sexual abuse, or neglect within two years of the initial classification, the Department shall not release any information as to that report. This provision shall not, however, require expunction of this information from the Department's internal records.

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.10 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.04 .05 WHEN RIGHTS UNDER THIS CHAPTER ATTACH.

(1) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall have the right to a formal file review and to a hearing under these Rules if:

(a) The Department intends to or shall release the individual's name under the emergency procedures of Rule 0250-7-9-.11.12 to any organization or person; or

(b) The Department intends to or shall release the individual's name in non-emergency situations to any organization or person.

(2) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose identity shall be placed in the Department's registry of perpetrators of abuse or neglect shall only have the right to a formal file review under these Rules.

(a) This paragraph applies when the Department will not identify or does not intend to identify to any organization or person in Rules that it has classified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.

(b) If after an individual exhausts the formal file review afforded by paragraph 2 of this Rule, and if within the two-year period from the date of the initial classification of the report the Department intends to identify to any organization or person that it has classified the individual in an "indicated" report as a perpetrator of abuse, severe child

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abuse, child sexual abuse, or neglect, the Department shall not release this information unless the individual is afforded the right to a

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hearing under Rule 0250-7-9.~~07~~08. The Department shall insure that the individual is notified in accordance with these Rules.

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1 -616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.~~05~~06 STANDARDS AND CRITERIA FOR REVIEW OF CLASSIFICATION OF REPORTS OF CHILD ABUSE/ NEGLECT AS "INDICATED".

(1) A report made against an alleged perpetrator shall be classified as "indicated" if the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, severe child abuse, child sexual abuse, or neglect. Proof of one or more of the following factors, linking the abusive act(s) to the alleged perpetrator, may constitute a preponderance of the evidence:

(a) Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that physical abuse, sexual abuse, or severe physical abuse occurred;

(b) An admission by the perpetrator;

(c) The statement of a credible witness or witnesses to the abusive or neglectful act;

(d) The child victim's statement that the abuse occurred;

(e) Physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;

(f) Physical evidence that could impact the classification decision:

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(g) The existence of behavioral patterns that may be indicative of child abuse/neglect and corroborates other evidence of abuse, severe child abuse, child sexual abuse, or neglect should be examined;

(h) The existence of circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.~~06~~.07. RIGHT TO NOTICE AND OPPORTUNITY FOR FORMAL FILE REVIEW.

(1) Within 10 business days after the Department has classified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall notify the individual, in writing at the individual's last known address, of the classification and shall inform the individual that he or she may request a formal file review by the Commissioner's designee to determine whether the report has been properly classified as "indicated."

(2) If the indicated perpetrator in the classified report is a minor, the Department shall notify the minor, the child's parent or guardian, Child Protective Services, Regional General Counsel, and any Guardian Ad Litem or other attorney for the child. The parent, guardian, Guardian Ad Litem, or the child's attorney may request a formal file review on the minor's behalf.

(3) The Department shall determine whether the emergency procedures of Rule 0250-7-9-.~~11~~12 apply to the individual whom the Department has classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report.

(4) The notice to obtain a formal file review shall contain, at a minimum, the following:

(Rule 0250-7-9-.07, continued)

(a) That the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report investigated by the Department;

(b) That the individual may request a formal file review by the Commissioner's designee within 10 business days of the date of the notice (the date of the notice must reflect the actual mailing date);

(c) That failure to submit a request for a formal file review within 10 business days, absent a showing of good cause, shall result in the classified report becoming final and the individual shall waive any right to a formal file review;

(d) That the request for a formal file review shall be submitted to State of Tennessee Department of Children's Services, Child Protective Services Division, Formal File Review, Cordell Hull Building, 436 Sixth Ave. North, Nashville, Tennessee, 37243; and

(e) That if the individual provides care, supervision, instruction or treatment to a child or children to any organization or individual, the formal file review decision may have an impact on the individual's employment, and that, in this case, the individual also shall have the right to an administrative hearing under Rule 0250-7-9-.~~07~~08.

(5) The Department shall date-stamp all requests for formal file reviews on the date received.

(6) The Department shall respond to a timely filed request for a formal file review within 10 business days of receipt by sending written notice of the individual's obligations pursuant to a formal file review process. This additional notice shall include, at a minimum, the following:

(a) That pursuant to the Department's Rules the individual may submit additional written or documentary information on his or her behalf to the address identified in paragraph 3(d) of this Rule;

(b) That the individual must submit the additional information within 30 business days of the date of the notice;

(c) That if the information is not timely submitted, the formal file review shall proceed with the information provided in the file and that the individual's right to submit additional information shall be waived; and

(d) That the formal file review shall be completed within 90 business days of the date of the notice.

(7) Unless the emergency procedures in Rule 0250-7-9-.~~07~~08 apply, during the 10-business-day period in which an individual may request a formal file review, the Department shall not

disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or

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neglect in an "indicated" report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.

(8) In conducting the formal file review, the Commissioner's designee shall determine whether the evidentiary standards set forth in Rule 0250-7-9-.~~05~~06 have been satisfied.

(9) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.~~05~~06 are not met, the report shall be reversed and it shall be classified as "not indicated." The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department.

(a) Within 10 business days of the date of the formal file review, the Department shall send to the individual who was classified in a report of abuse, severe child abuse, child sexual abuse, or neglect at his or her last known address written notice containing, at a minimum, the following:

1. the formal file review has classified the report as "not indicated"; and

2. the Department will not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.

(10) If the Commissioner's designee determines that the proof in the report supports a different conclusion than that reached by the Department, the report shall be modified and it shall be classified accordingly. The Commissioner shall notify the individual in accordance with paragraphs 8 or 10 of this Rule.

(11) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.~~05~~06 are met, the report shall be upheld and it shall be classified as "indicated."

(a) Within 10 business days of the date of the formal file review, the Department shall send to the individual who was classified in a report of abuse, severe child abuse, child sexual abuse, or neglect at his or her last known address written notice containing, at a minimum, the following:

1. That the individual has been identified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report investigated by the Department; and

2. That, after conducting a formal file review, the "indicated" report was upheld.

(b) The notice in this paragraph shall also contain, at a minimum, the following:

1. That, if the individual meets the standards for an administrative hearing pursuant to 0250-7-9-.0809,~~.~~ the individual may request a hearing within 10 business days of the date of the notice before an administrative law judge by filling out an attached request for administrative hearing;

2. That, if the individual requests a hearing, he or she shall complete the attached form and mail or fax it to the Department's Administrative Procedures Division;

3. That, if the individual fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing; and

4. That, if the individual fails to timely request a hearing absent good cause, the Department will release its finding of abuse, severe child abuse, child sexual abuse, or neglect to any individual or organization.

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1 -616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.07.08 ALLEGED PERPETRATORS WITH CURRENT ACCESS TO CHILDREN; EMERGENCY NOTIFICATION.

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(Rule 0250-7-9-.08, continued)

(1) The provisions of this Rule apply to individuals classified as perpetrators of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report who pose an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.

(2) As soon as reasonably possible after the Department has investigated and identified an individual in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, who poses an immediate threat to the health, safety or welfare of a child or children to whom the alleged perpetrator has access, the Department shall conduct an emergency file review in accordance with this rule.

(3) The Commissioner's designee shall determine: (1) Whether the indication should be upheld; and (2) Whether there is an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.

(a) If both factors are met, the Department shall then follow the procedures set forth in paragraphs (4), (5) and (6) of this Rule.

(b) If no such immediate threat exists, the Department shall not reveal the alleged perpetrator's identity.

(4) As soon as reasonably possible after the Commissioner's designee has determined that an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access exists, the Department shall notify in writing both the alleged perpetrator and the organization or person with whom the individual is associated identified of such immediate threat.

(a) The notice shall contain the information set forth in Rule 0250-7-9-. ~~06~~07(10)(b); and

(b) A statement that the organization or person with which the individual is associated shall receive notice of the Department's determination.

1. The notice shall also contain the following:

(i) that the organization or person shall ensure that the individual is not a threat to the safety of any child in their care; and

(ii) that the individual has been notified of his or her rights to a hearing on the allegations, and that the organization or person shall be notified of the final decision regarding the allegations.

(5)~~(5)~~ If the individual fails timely to request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's "indicated" report regarding the individual shall

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then be

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available for dissemination to any organization or individual and the individual's identity shall be placed in the registry.

(6) If the individual timely requests a hearing, the Department shall follow the procedures set forth in Rule 0250-7-9-.~~08~~09(4).

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1 -616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.02 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.~~08~~.09 RIGHT TO NOTICE AND OPPORTUNITY FOR ADMINISTRATIVE HEARING.

(1) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose classification has been upheld pursuant to a formal file review may request an administrative hearing before a hearing officer of the Administrative Procedures Division of the Department if the Department is going to release information or if the indication will affect their employment or any professional license.

(2) An individual shall request an administrative hearing within 10 business days from the date of the notice of the outcome of the formal file review. A request for a hearing submitted before a case file review has been completed shall be invalid.

(3) Unless the emergency procedures in Rule 0250-7-9-.~~07~~08 apply, during the 10-business day period in which an individual may request a hearing, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.

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(Rule 0250-7-9-.09, continued)

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(a) If the individual timely requests a hearing, the Department may only release a statement stating that a hearing concerning the individual pursuant to the child abuse laws of this State is currently pending.

(4) If the individual timely requests a hearing, the Department shall schedule a hearing and give the individual adequate notice of the hearing, as provided by Rules 1360-4-1.

(a) The hearing will be held, and an initial order entered therein, within 90 business days of the date of the notice required in Rule 0250-7-9-. ~~06~~07(10), unless:

1. the time limit is extended or waived by agreement of the parties, or for good cause shown; or

2. the proceedings are stayed pursuant to Rule 0250-7-9-.~~09~~10.

(5) If the individual fails timely to request a hearing, the individual shall waive his or her right to a hearing. The Department's "indicated" report regarding the individual shall be then be available for dissemination to any organization or person with whom the individual is associated and the individual's identity shall be placed in the registry.

(6) An individual who fails timely to request a hearing may be granted a hearing provided that he or she shows good cause for his or her failure to make a timely request.

(a) Good cause is limited to a failure to receive the notice referred to in Rule 0250-7-9. ~~06~~07(10), severe illness, or some other circumstance that substantially prevented the individual from timely requesting a hearing.

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.05 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.~~09~~.10 STAY OF ADMINISTRATIVE PROCEEDINGS.

(1) The Department shall stay all administrative proceedings under these Rules:

(Rule 0250-7-9-.10, continued)

(a) If an individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect has been arrested or indicted on criminal charges that are derived from the same allegations that caused the Department to investigate; or

(b) if an individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect is the subject of other administrative or civil proceedings that are derived from the same allegations that caused the Department to investigate.

(2) If the arrest, indictment, or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of a final order by the Department, all proceedings under these Rules shall be immediately stayed pending final resolution (including appeals) of the judicial or administrative proceedings. Provided, however, that the Department shall notify an individual in accordance with Rules 0250-7-9-.~~06~~07, 0250-7-9-.~~07~~08, or 0250-7-9-.~~08~~09, as appropriate. The individual shall comply with the provisions of these Rules, as appropriate, in order to preserve his or her future rights to a hearing or to judicial review. During the stay, unless the emergency procedures in Rule 0250-7-9-.~~07~~08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report until the proceedings referred to in paragraph 1 of this Rule become final. The Department may only release the fact that judicial or administrative proceedings involving allegations of abuse, severe child abuse, child sexual abuse, or neglect by the individual are pending before a specified court or administrative proceeding.

(3) If a criminal prosecution results in a conviction or guilty plea for any offense listed in Tenn. Code Ann.§37-1-602(a)(3), or for any act which would constitute physical abuse, sexual abuse, or severe physical abuse as defined in Tenn. Code Ann. §37-1-102(21), or if the individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under Tenn. Code Ann. §37-1-602(a)(3) or Tenn. Code Ann. §37-1-102(21), or if any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed, any act which would constitute physical abuse, sexual abuse, or severe physical abuse, as defined in Tenn. Code Ann. §37-1-102(21) or any act which constitutes child sexual abuse as defined in Tenn. Code Ann. §37-1-602(a)(3), then such conviction and/or adjudication will be conclusive evidence that the individual is the perpetrator classified in the "indicated" report and the individual will have no right to a hearing provided for in 0250-7-9-.~~08~~09 in regard to that particular report. In this event, the Department may release information about the perpetrator as permitted under these Rules.

(a) If the criminal, civil or administrative proceeding does not result in a conviction or in a

finding as specified in paragraph 3 of this Rule, including pretrial diversion, this fact shall be admissible

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in the Department's administrative hearing, but shall not be conclusive on the issue of whether the report is properly classified as "indicated."

(4) If administrative proceedings were stayed pursuant to this Rule, they shall resume at the point at which they were stayed if the alleged perpetrator so requests in writing to Tennessee Department of Children's Services, Case File Review, 8th Floor, Cordell Hull Building, Child Protect Services, 436 6th Ave. N., Nashville, Tennessee 37243, within 30 days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails timely to make such a written request, he or she shall waive his or her rights to a hearing in regard to that report. The indicated report and information regarding the perpetrator will be released as permitted under these Rules.

(5) Unless the individual has waived his or her rights to a formal file review or to an administrative hearing by failing timely to request same, if administrative proceedings have been stayed, the Department shall notify in writing the individual as follows:

(a) That administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual;

(b) that the administrative proceedings under these rules will be reinstituted at the point they were stayed only if the individual requests such in writing to the local office of the Department which issued the original notice within 30 days of the entry of a final order by the court or administrative tribunal or verdict by a criminal court (unless the order or verdict is a conviction or guilty plea as specified in paragraph (3) above);

(c) if the individual fails timely to make such a written request, he or she shall waive his or her rights to an administrative hearing in regard to the report.

Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*
Administrative History: *Original rule filed September 13, 1988; effective October 28, 1988. Rule*

assigned a new control number, removed and renumbered from 1240-7-9-.06 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.

0250-7-9-.~~10~~.11CONDUCT OF THE ADMINISTRATIVE HEARING.

(1) The hearing provided for in 0250-7-9-.~~08~~09 will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rule 0250-5-6.

(2) In hearings pursuant to 0250-7-9-.~~08~~09, the sole issue for the hearing officer is to determine whether the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, severe child abuse, child sexual abuse, or neglect. In making this determination, the hearing officer shall consider whatever relevant and admissible proof the individual offers that the report is not properly classified as indicated and shall further consider any competent and admissible proof concerning the dynamics of child abuse relevant to whether the classification is proper.

(3) Unless the emergency procedures in Rule 0250-7-9-.~~07~~08 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report until the individual has exhausted all of his or her appeal rights under these Rules, including judicial review of a final order by the Department. The Department may only release the fact that a hearing concerning the individual pursuant to the child abuse laws of the State is pending.

(4) If the Department, or a court of competent jurisdiction in the event of judicial review, concludes that the standards in Rule 0250-7-9-.~~05~~06 are not met, the report shall be classified as "not indicated." The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.

(a) If the Department had previously disclosed that an individual was under investigation under the child abuse laws of this State, the Department shall forthwith notify that organization or person that the report was "not indicated." Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.

(5) If the Individual is dissatisfied with the decision of the Department, a Petition for

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(Rule 0250-7-9-.11, continued)

Reconsideration of the Final Order may be filed within fifteen (15) days from the date of the Order. Further, the individual may petition for review in the Chancery Court of his/her county of residence or in Davidson County within sixty (60) days of the date of this order.

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Authority: *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).* ***Administrative History:*** *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.07 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

0250-7-9-.~~11~~12 EVIDENCE; STANDARD OF PROOF AT THE ADMINISTRATIVE HEARING.

(1) Admissibility of evidence in hearings pursuant to 0250-7-9-.~~08~~09 is governed by the provisions of Tenn. Code Ann. §4-5-313. Provided, however, that "evidence admissible in a court" shall, for purposes of hearings pursuant to this chapter, refer also to evidence admissible in any juvenile court of this state. Provided further that the evidentiary provisions of Title 24, Chapter 7, Part I of the Tennessee Code Annotated and Tenn. Code Ann. §§37-1-401 et seq. and 37-1-601 et seq., including the use of videotape testimony, shall be applicable to such hearings.

(2) An individual will be indicated as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect only after the case is proven by a preponderance of the evidence.

(3) Following final resolution of the case, whether by administrative hearing, court order, or waiver by the alleged perpetrator, the Department shall promptly notify of its decision the organization or person with whom the individual is associated of its decision.

(a) If the classification of the report as "indicated" is upheld, the organization or person shall continue to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.

(b) If the classification of the report as "indicated" is reversed, the organization or person will be promptly notified of the reversal of the indication and will not be required to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.

Authority: *T.C.A. §§4-5-226(b)(2); 4-5-313; 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).* ***Administrative History:*** *Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.08 filed and effective March 25, 1999. Repeal and new rule filed September 11, 2006; effective November 25, 2006.*

November, 2006 (Revised)

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

Date: 7/17/2013

Signature: [signature]

Name of Officer: Douglas Earl Dimond

Title of Officer: General Counsel

DAWNITA WOODALL STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.
My Commission Expires DEC. 6, 2016

Subscribed and sworn to before me on: 7/17/13

Notary Public Signature: [signature]

My commission expires on: 12/6/16

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. [signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

7-17-13
Date

Department of State Use Only

RECEIVED 2013 JUL 19 AM 10:27 DIVISION OF SECRETARY OF STATE

Filed with the Department of State on: 7/19/13

Effective for: 180 *days

Effective through: 1/15/14

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

Tre Hargett by Mary Beth Thomas POA
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Department of Health
DIVISION:	Community Health Services
SUBJECT:	Determination of citizenship or qualified alien status of persons seeking to obtain primary care services
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-58-102, 4-58-108, 4-58-110, 68-1-103, 68-1-106, and 68-2-603
EFFECTIVE DATES:	July 19, 2013 - January 15, 2014
FISCAL IMPACT:	NONE
STAFF RULE ABSTRACT:	The new rule provides applicants with guidance on the criteria for obtaining primary care services from a health department in accordance with the Eligibility Verification for Entitlements Act and how to request reconsideration if services are denied. Primary care services are the basic level of health care generally rendered by general practitioners, family practitioners, internists, obstetricians, and pediatricians and advanced practice nurses and is offered at clinics. However, this rule does not apply to applicants under 18 years of age, certain exempt services, emergency services, and prenatal care. The rule requires that each applicant for primary care services attests to his or her status as a citizen or qualified alien and submit certain forms of identification. Applicants claiming to be qualified aliens are required to submit at least two forms of identification. If they do submit two forms of identification, their alien status will be verified through SAVE or SEVIS. If SAVE or SEVIS indicates that the applicant is not a citizen or qualified alien, the clinic will deny future primary care services. The applicant may request reconsideration in writing within 21 days of denial of services. There will be a review of the determination of whether the applicant is a citizen or qualified alien. The determination after the review is final.

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)

This Chapter is expected to have no impact on local governments.

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.

These rules do not affect small businesses.

Department of State
Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
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For Department of State Use Only

Sequence Number: 07-12-13
Rule ID(s): 5510
File Date (effective date): 7/19/13
End Effective Date: 1/15/14

Emergency Rule Filing Form

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

Agency/Board/Commission:	Department of Health
Division:	Community Health Services
Contact Person:	Jan BeVille, M.D.
Address:	425 5th Avenue North, 4th Floor, Nashville, TN
Zip:	37243
Phone:	(615) 741-0393
Email:	Jan.beville@tn.gov

Rule Type:
X Emergency Rule

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Statement of Necessity:
The "Eligibility Verification for Entitlements Act" requires that the Department obtain access to the Systematic Alien Verification for Entitlements (SAVE program) or the Student and Exchange Visitor Information System (SEVIS system) operated by the U.S. Department of Homeland Security. The Memorandum of Understanding issued by the Department of Homeland Security to permit the Department access to that system requires that the Department have an appeals process for those who are denied services. The purpose of these rules is to identify persons who are eligible for services, and to create a review process for those who are denied services. Adoption of emergency rules is necessary under Tenn. Code Ann. § 4-5-208(a)(4) and (5) in order to comply with the requirements of the United States Department of Homeland Security, an agency of the federal government, for access to the SAVE program, and to implement rules required by 2012 and 2013 enactments of the general assembly.

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)

Chapter Number	**Chapter Title**
1200-37-01	Primary Care Services
Rule Number	**Rule Title**
1200-37-01-.01	Definitions
1200-37-01-.02	Applicability of This Part
1200-37-01-.03	Application for Primary Care Services
1200-37-01-.04	Reconsideration of Denial

(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)

New Rule
1200-37-01
Primary Care Services

1200-37-01-.01 Definitions.
1200-37-01-.02 Applicability of This Part.
1200-37-01-.03 Application for Primary Care Services.
1200-37-01-.04 Reconsideration of Denial.

1200-37-01-.01 Definitions.

(1) For the purpose of these regulations the terms used herein are defined as follows:

(a) "Adult" means an individual aged eighteen or over.

(b) "Applicant" means an individual seeking primary care services.

(c) "Citizen" means a citizen of the United States, whether native-born or naturalized.

(d) "Clinic" means a site under the control of the Department or a county health department at which primary care services are offered to the public and which is not a federally qualified health center (FQHC).

(e) "Department" means the Tennessee Department of Health.

(f) "Emergency" means a medical or dental condition manifesting itself by acute systems of sufficient severity (including pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(g) "Exempt Services" means those services which are not subject to eligibility verification under the Eligibility Verification for Entitlements Act, T.C.A. §§ 4-58-101 et seq.

(h) "Federal public benefit"

1. Has the same meaning as provided in 8 U.S.C § 1611; and

2. Does not mean a benefit listed in 8 U.S.C. § 1611 (b).

(i) "Primary Care Services" means the basic level of health care generally rendered by general practitioners, family practitioners, internists, obstetricians, and pediatricians and advanced practice nurses and is offered at clinics.

(j) "Program Director" means the Department employee responsible for the overall supervision of primary care services for the Department.

(k) "Provider" means a health care professional working in a clinic.

(l) "Qualified alien" means: an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is:

1. Lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. §§ 1101 et seq.];

2. Granted asylum under section 208 of such Act [8 U.S.C. § 1158];

3. Admitted to the United States under section 207 of such Act [8 U.S.C. § 1157];

4. Paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. § 1182 (d)(5)] for a period of at least 1 year;

5. One whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. § 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. § 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208);

6. Granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. § 1153(a)(7)] as in effect prior to April 1, 1980; or

7. A Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

8. An alien:

   (i) who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

   (ii) who has been approved or has a petition pending which sets forth a prima facie case for:

      (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. § 1154(a)(1)(A)(ii), (iii), (iv)],

      (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. § 1154(a)(1)(B)(ii), (iii)],

      (III) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. § 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996),

      (IV) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. § 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. § 1154(a)(1)(B)(i)]; or

      (V) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. § 1229b(b)(2)]; or

   (iii) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(iv) who meets the requirements of subpart (ii) of this part; or

(v) who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. §1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

(m) "SAVE program" means the systematic alien verification for entitlements program created pursuant to the federal Immigration Reform and Control Act of 1986, compiled in 8 U.S.C. §§ 1101 et seq., and operated by the United States department of homeland security, or any successor program thereto.

(n) "SEVIS system" means the student and exchange visitor information system created pursuant to section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (as amended), and operated by the United States department of homeland security, or any successor program thereto.

(o) "State or local public benefit"

1. Means any public benefit as defined in 8 U.S.C. § 1621, that is provided or administered by a state governmental entity or a local health department; and

2. Does not mean a benefit listed in 8 U.S.C. § 1621(b).

Authority: T.C.A. §§ 4-58-102, 68-1-103, 68-1-106, 68-2-603, 8 U.S.C. § 1641(b), and 2013 Acts, Pub. Chap. 120.

1200-37-01-.02 Applicability of This Part. This part shall apply to all primary care services offered in clinics, provided, however, that it shall not apply to:

(1) Applicants under the age of eighteen;

(2) Exempt services;

(3) Emergency Services, including emergency dental services; or

(4) Prenatal care.

Authority: T.C.A. §§ 4-58-102, 4-58-106, 4-58-110, 68-1-103, 68-1-106, and 68-2-603.

1200-37-01-.03 Application for Primary Care Services. Each adult applicant for services under this program shall attest to his/her status as a citizen or qualified alien and shall submit to verification of that status as follows:

(1) Applicants claiming to be citizens shall present one of the following:

(a) A valid Tennessee driver license or photo identification license issued by the department of safety;

(b) A valid driver license or photo identification license from another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department of safety;

(c) An official birth certificate issued by a state, jurisdiction or territory of the United States, including Puerto Rico, United States Virgin Islands, Northern Mariana Islands, American Samoa, Swains Island, and Guam; provided, that Puerto Rican birth certificates issued before July 1, 2010, shall not be recognized under this rule;

(d) A United States government-issued certified birth certificate;

(e) A valid, unexpired United States passport;

(f) A United States certificate of birth abroad (DS-1350 or FS-545);

(g) A report of birth abroad of a citizen of the United States (FS-240);

(h) A certificate of citizenship (N560 or N561);

(i) A certificate of naturalization (N550, N570 or N578);

(j) A United States citizen identification card (I-197, I-179);

(k) Any successor document of subparagraphs (1)(e) through (1)(j) above; or

(l) A social security number that the entity or local health department may verify with the social security administration in accordance with federal law.

(2) Applicants claiming to be qualified aliens shall present two forms of documentation of identity and immigration status as determined by the United States Department of Homeland Security to be acceptable for verification through the SAVE program or SEVIS system.

(3) Where an applicant claiming to be a qualified alien presents only one form of documentation of identity described in (2) above, the clinic shall attempt to verify the applicant's status through the SAVE program or SEVIS system.

(4) If an applicant who claims eligibility as a qualified alien is unable to present two (2) forms of documentation as described in paragraph (2) above, then the applicant shall present at least one (1) such document that the entity or local health department shall then verify through the SAVE program or SEVIS system.

(5) Any document submitted pursuant to paragraphs (1) or (2) of this rule shall be presumed to be proof of eligibility until final verification is received from the SAVE program or SEVIS system.

(6) If the SAVE program or SEVIS system indicates that the applicant is not a citizen or qualified alien, the clinic shall deny future primary care services and shall pursue any appropriate action under T.C.A. §§ 4-58-104 or 4-58-105.

Authority: T.C.A. §§ 4-58-102, 4-58-104, 4-58-105, 4-58-106, 4-58-107, 4-58-108, 4-58-109, 4-58-110, 68-1-103, 68-1-106, 68-2-603, and 2013 Acts, Pub. Chap. 120.

1200-37-01-.04 Reconsideration of Denial.

(1) Applicants denied or removed from primary care services may request reconsideration.

(a) The applicant must request reconsideration in writing, directed to the Program Director, within twenty one (21) calendar days of denial or removal. The Program Director will issue a reconsidered decision in writing within fourteen (14) days of the request for reconsideration. The Program Director's review is limited to a determination of whether or not the applicant meets eligibility criteria. The decision of the Program Director is final.

Authority: T.C.A. §§ 4-58-102, 4-58-108, 4-58-110, 68-1-103, 68-1-106, and 68-2-603.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

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

BARBARA E. WEST
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES: May 5, 2015

Date: 7/16/2013

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel, Department of Health

Subscribed and sworn to before me on: 07/16/2013

Notary Public Signature: Barbara E. West

My commission expires on: 05/15/2015

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

7-17-13
Date

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RECEIVED
2013 JUL 19 PM 4:21
SECRETARY OF STATE

Filed with the Department of State on: 7/19/13

Effective for: 180 *days

Effective through: 1/15/14

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

Tre Hargett by Mary Beth Maxey POA
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Community Health Services
SUBJECT:	Primary Care Services
STATUTORY AUTHORITY:	Chapter 1061 of the Public Acts of 2012
EFFECTIVE DATES:	December 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules outline the eligibility verification process which occurs upon application for primary care services offered in clinics, not including services for applicants less than eighteen years of age, emergency services, prenatal services or otherwise exempt services. Under the new rules, each adult applicant shall attest to their status as a citizen or qualified alien and submit one of several possible documents to prove such status, such as a driver license or photo identification license issued by Tennessee or another state with comparable issuance requirements, original birth certificate issued by a state, jurisdiction or territory of the United States, United States government-issued birth certificate, United States passport, certificate of naturalization or a social security number. Qualified aliens shall present two forms of documentation of identity and immigration status, which shall then be verified through the SAVE program or the SEVIS system. If a qualified alien presents only one form of documentation, the clinic shall try to verify the applicant's status through the SAVE program or the SEVIS system. If either program indicates that the applicant is not a United State citizen or qualified alien, the clinic shall deny future primary care services and pursue appropriate action. In addition, an applicant can request reconsideration in writing to the Program Director within twenty-one days of

denial. The Program Director is to issue a reconsideration in writing within fourteen days, which is final.

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.

These rule amendments do not affect small businesses.

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)

This Chapter is expected to have no impact on local governments.

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For Department of State Use Only

Sequence Number: 07-13-13
Rule ID(s): 5511
File Date: 7/25/13
Effective Date: 12/29/13

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:	Department of Health
Division:	Community Health Services
Contact Person:	Jan BeVille, M.D.
Address:	425 5th Avenue North, 4th Floor, Nashville TN
Zip:	37243
Phone:	(615) 741-0393
Email:	jan.beville@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-37-01	Primary Care Services
Rule Number	**Rule Title**
1200-37-01-.01	Definitions
1200-37-01-.02	Applicability of This Part
1200-37-01-.03	Application for Primary Care Services
1200-37-01-.04	Reconsideration of Denial

(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)

New Rule
1200-37-01

Primary Care Services

1200-37-01-.01 Definitions.
1200-37-01-.02 Applicability of This Part.
1200-37-01-.03 Application for Primary Care Services.
1200-37-01-.04 Reconsideration of Denial.

1200-37-01-.01 Definitions.

(1) For the purpose of these regulations the terms used herein are defined as follows:

(a) "Adult" means an individual aged eighteen or over.

(b) "Applicant" means an individual seeking primary care services.

(c) "Citizen" means a citizen of the United States, whether native-born or naturalized.

(d) "Clinic" means a site under the control of the Department or a county health department at which primary care services are offered to the public and which is not a federally qualified health center (FQHC).

(e) "Department" means the Tennessee Department of Health.

(f) "Emergency" means a medical or dental condition manifesting itself by acute systems of sufficient severity (including pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(g) "Exempt Services" means those services which are not subject to eligibility verification under the Eligibility Verification for Entitlements Act, T.C.A. §§ 4-58-101 et seq.

(h) "Federal public benefit"

1. Has the same meaning as provided in 8 U.S.C § 1611; and

2. Does not mean a benefit listed in 8 U.S.C. § 1611 (b).

(i) "Primary Care Services" means the basic level of health care generally rendered by general practitioners, family practitioners, internists, obstetricians, and pediatricians and advanced practice nurses and is offered at clinics.

(j) "Program Director" means the Department employee responsible for the overall supervision of primary care services for the Department.

(k) "Provider" means a health care professional working in a clinic.

(l) "Qualified alien" means: an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is:

1. Lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. §§ 1101 et seq.];

2. Granted asylum under section 208 of such Act [8 U.S.C. § 1158];

3. Admitted to the United States under section 207 of such Act [8 U.S.C. § 1157];

4. Paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. § 1182 (d)(5)] for a period of at least 1 year;

5. One whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. § 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. § 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208);

6. Granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. § 1153(a)(7)] as in effect prior to April 1, 1980; or

7. A Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

8. An alien:

   (i) who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

   (ii) who has been approved or has a petition pending which sets forth a prima facie case for:

      (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. § 1154(a)(1)(A)(ii), (iii), (iv)],

      (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. § 1154(a)(1)(B)(ii), (iii)],

      (III) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. § 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996),

      (IV) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. § 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. § 1154(a)(1)(B)(i)]; or

      (V) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. § 1229b(b)(2)]; or

   (iii) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(iv) who meets the requirements of subpart (ii) of this part; or

(v) who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. §1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

(m) "SAVE program" means the systematic alien verification for entitlements program created pursuant to the federal Immigration Reform and Control Act of 1986, compiled in 8 U.S.C. §§ 1101 et seq., and operated by the United States department of homeland security, or any successor program thereto.

(n) "SEVIS system" means the student and exchange visitor information system created pursuant to section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (as amended), and operated by the United States department of homeland security, or any successor program thereto.

(o) "State or local public benefit"

1. Means any public benefit as defined in 8 U.S.C. § 1621, that is provided or administered by a state governmental entity or a local health department; and

2. Does not mean a benefit listed in 8 U.S.C. § 1621(b).

Authority: T.C.A. §§ 4-58-102, 68-1-103, 68-1-106, 68-2-603, 8 U.S.C. § 1641(b), and 2013 Acts, Pub. Chap. 120.

1200-37-01-.02 Applicability of This Part. This part shall apply to all primary care services offered in clinics, provided, however, that it shall not apply to:

(1) Applicants under the age of eighteen;

(2) Exempt services;

(3) Emergency Services, including emergency dental services; or

(4) Prenatal care.

Authority: T.C.A. §§ 4-58-102, 4-58-106, 4-58-110, 68-1-103, 68-1-106, and 68-2-603.

1200-37-01-.03 Application for Primary Care Services. Each adult applicant for services under this program shall attest to his/her status as a citizen or qualified alien and shall submit to verification of that status as follows:

(1) Applicants claiming to be citizens shall present one of the following:

(a) A valid Tennessee driver license or photo identification license issued by the department of safety;

(b) A valid driver license or photo identification license from another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department of safety;

(c) An official birth certificate issued by a state, jurisdiction or territory of the United States, including Puerto Rico, United States Virgin Islands, Northern Mariana Islands, American Samoa, Swains Island, and Guam; provided, that Puerto Rican birth certificates issued before July 1, 2010, shall not be recognized under this rule;

(d) A United States government-issued certified birth certificate;

(e) A valid, unexpired United States passport;

(f) A United States certificate of birth abroad (DS-1350 or FS-545);

(g) A report of birth abroad of a citizen of the United States (FS-240);

(h) A certificate of citizenship (N560 or N561);

(i) A certificate of naturalization (N550, N570 or N578);

(j) A United States citizen identification card (I-197, I-179);

(k) Any successor document of subparagraphs (1)(e) through (1)(j) above; or

(l) A social security number that the entity or local health department may verify with the social security administration in accordance with federal law.

(2) Applicants claiming to be qualified aliens shall present two forms of documentation of identity and immigration status as determined by the United States Department of Homeland Security to be acceptable for verification through the SAVE program or SEVIS system.

(3) Where an applicant claiming to be a qualified alien presents only one form of documentation of identity described in (2) above, the clinic shall attempt to verify the applicant's status through the SAVE program or SEVIS system.

(4) If an applicant who claims eligibility as a qualified alien is unable to present two (2) forms of documentation as described in paragraph (2) above, then the applicant shall present at least one (1) such document that the entity or local health department shall then verify through the SAVE program or SEVIS system.

(5) Any document submitted pursuant to paragraphs (1) or (2) of this rule shall be presumed to be proof of eligibility until final verification is received from the SAVE program or SEVIS system.

(6) If the SAVE program or SEVIS system indicates that the applicant is not a citizen or qualified alien, the clinic shall deny future primary care services and shall pursue any appropriate action under T.C.A. §§ 4-58-104 or 4-58-105.

Authority: T.C.A. §§ 4-58-102, 4-58-104, 4-58-105, 4-58-106, 4-58-107, 4-58-108, 4-58-109, 4-58-110, 68-1-103, 68-1-106, 68-2-603, and 2013 Acts, Pub. Chap. 120.

1200-37-01-.04 Reconsideration of Denial.

(1) Applicants denied or removed from primary care services may request reconsideration.

(a) The applicant must request reconsideration in writing, directed to the Program Director, within twenty one (21) calendar days of denial or removal. The Program Director will issue a reconsidered decision in writing within fourteen (14) days of the request for reconsideration. The Program Director's review is limited to a determination of whether or not the applicant meets eligibility criteria. The decision of the Program Director is final.

Authority: T.C.A. §§ 4-58-102, 4-58-108, 4-58-110, 68-1-103, 68-1-106, and 68-2-603.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of Health on 07/16/2013, and is in compliance with the provisions of T.C.A. § 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: 07/16/2013

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel, Tennessee Department of Health

BARBARA E. WEST STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

MY COMMISSION EXPIRES: May 5, 2015

Subscribed and sworn to before me on: 07/16/2013

Notary Public Signature: Barbara E. West

My commission expires on: 05/15/2015

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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

7-23-13
Date

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Filed with the Department of State on: 7/25/13

Effective on: 12/29/13

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	Exclusions under the TennCare Medicaid Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109
EFFECTIVE DATES:	September 29, 2013 to June 30, 2014
FISCAL IMPACT:	Decreases state annual expenditures by $864,600
STAFF RULE ABSTRACT:	This rule discontinues the coverage of allergy medications for adults receiving assistance under the TennCare Medicaid program.

Public Hearing Comments

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

There were no public comments on these rules.

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 rules are not anticipated to have an effect on small businesses.

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.

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For Department of State Use Only

Sequence Number: 07-01-13
Rule ID(s): 5503
File Date: 7/1/13
Effective Date: 9/29/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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

Revision Type (check all that apply):

X Amendments
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.04	Covered Services
1200-13-13-.10	Exclusions

(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)

Subparagraph (c) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is amended by adding a new Part 11. which shall read as follows:

11. Allergy medications.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

Part 20. of Subparagraph (a) of Paragraph (3) of Rule 1200-13-13-.10 Exclusions is amended by adding a new Subpart (xi) which shall read as follows:

(xi) Allergy medications

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 06/10/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/09/13

Rulemaking Hearing(s) Conducted on: (add more dates). 05/30/13

Date: 6/10/2013

Signature:

Name of Officer: Darin J. Gordon

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

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 6/10/13

Notary Public Signature: Cheryl D Kline

My commission expires on: 8/23/16

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

Robert E. Cooper, Jr.
Attorney General and Reporter

6-25-13
Date

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Filed with the Department of State on: 7/1/13

Effective on: 9/29/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	Exclusions under the TennCare Standard Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-5-202, 71-5-105, and 71-5-109
EFFECTIVE DATES:	September 29, 2013 to June 30, 2014
FISCAL IMPACT:	Decreases state annual expenditures by $864,600
STAFF RULE ABSTRACT:	This rule discontinues the coverage of allergy medications for adults receiving assistance under the TennCare Standard program.

Public Hearing Comments

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

There were no public comments on these rules.

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 rules are not anticipated to have an effect on small businesses.

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.

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For Department of State Use Only

Sequence Number: 07-02-13
Rule ID(s): 5504
File Date: 7/1/13
Effective Date: 9/29/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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

Revision Type (check all that apply):

X Amendments
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.04	Covered Services
1200-13-14-.10	Exclusions

(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)

Subparagraph (c) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is amended by adding a new Part 11. which shall read as follows:

11. Allergy medications.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

Part 20. of Subparagraph (a) of Paragraph (3) of Rule 1200-13-14-.10 Exclusions is amended by adding a new Subpart (xi) which shall read as follows:

(xi) Allergy medications

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 06/10/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/09/13

Rulemaking Hearing(s) Conducted on: (add more dates). 05/30/13

Date: 6/10/2013

Signature:

Name of Officer: Darin J. Gordon

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

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 6/10/13

Notary Public Signature: Cheryl D Kline

My commission expires on: 8/23/16

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

Robert E. Cooper, Jr.
Attorney General and Reporter

6-28-13
Date

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SECRETARY OF STATE

Filed with the Department of State on: 7/1/13

Effective on: 9/29/13

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Medicaid - Covered Dental Services under TennCare managed care program.
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 71-5-105
EFFECTIVE DATES:	September 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules clarify that effective October 1, 2013, TennCare reimbursement for orthodontic treatment approved and begun before age 21 will end on the individual's 21st birthday. These rules reflect that for individuals receiving treatment prior to October 1, 2013, the treatment may continue until completion as long as the enrollee remains eligible for TennCare Standard. These rules revise the definition of "handicapping malocclusion" for the purpose of determining eligibility for covered dental services.

Public Hearing Comments

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

Copy of response to comments is included with filing.

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 rules are not anticipated to have an effect on small businesses.

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.

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Sequence Number: 07-03-13
Rule ID(s): 5505
File Date: 7/1/13
Effective Date: 9/29/13

Rulemaking Hearing Rule(s) Filing Form

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

Revision Type (check all that apply):

X Amendments
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.01	Definitions
1200-13-13-.04	Covered Services

(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)

Paragraph (51) Handicapping Malocclusion of Rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new Paragraph (51) which shall read as follows:

~~(51) Handicapping Malocclusion, for the purposes of determining eligibility under these regulations shall mean the presence of abnormal dental development that has at least one of the following:~~

~~(a) A medical condition and/or a nutritional deficiency with medical physiological impact, that is documented in the physician progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to medical treatment without orthodontic treatment.~~

~~(b) The presence of a speech pathology, that is documented in speech therapy progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to speech therapy without orthodontic treatment.~~

~~(c) Palatal tissue laceration from a deep impinging overbite where lower incisor teeth contact palatal mucosa. This does not include occasional biting of the cheek.~~

~~Anecdotal information is insufficient to document the presence of a handicapping malocclusion. Anecdotal information is represented by statements that are not supported by professional progress notes that the patient has difficulty with eating, chewing, or speaking. These conditions may be caused by other medical conditions in addition to the misalignment of the teeth.~~

(51) Handicapping Malocclusion shall mean a malocclusion which causes one of the following medical conditions:

(a) A nutritional deficiency that has proven non-responsive to medical treatment without orthodontic treatment. The nutritional deficiency must have been diagnosed by a qualified treating physician and must have been documented in the qualified treating physician's progress notes. The progress notes that document the nutritional deficiency must predate the treating orthodontist's prior authorization request for orthodontics.

(b) A speech pathology that has proven non-responsive to speech therapy without orthodontic treatment. The speech pathology must have been diagnosed by a qualified speech therapist and must have been documented in the qualified speech therapist's progress notes. The progress notes that document the speech pathology must predate the treating orthodontist's prior authorization request for orthodontics.

(c) Laceration of soft tissue caused by a deep impinging overbite. Occasional cheek biting does not constitute laceration of soft tissue. Laceration of the soft tissue must be documented in the treating orthodontist's progress notes and must predate the treating orthodontist's prior authorization request for orthodontics.

Anecdotal information is insufficient to document the presence of a handicapping malocclusion. The presence of a handicapping malocclusion must be supported by the treating professional's progress notes and patient record.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

Part 5. Dental Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new Part 5. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER

5. Dental Services [defined at 42 CFR §440.100].	Preventive, diagnostic, and treatment services covered as medically necessary. Dental services under EPSDT~~,~~ ~~including dental screens,~~ are provided in accordance with the state's periodicity schedule as determined after consultation with recognized dental organizations and at other intervals as medically necessary. ~~Orthodontic services must be prior approved and are limited to individuals under age 21 requiring these services for one of the following reasons:~~ ~~(1) because of a handicapping malocclusion or another developmental anomaly or injury resulting in severe misalignment or handicapping malocclusion of teeth. The Salzmann Index will be used to measure the severity of the malocclusion. A Salzmann score of 28 will be used as the threshold value for making orthodontic determinations of medical necessity. In addition, individual consideration will be applied for those unique orthodontic cases that may not be accounted for solely by the Salzmann Index;~~ ~~(2) following repair of an enrollee's cleft palate.~~ Orthodontic services must be prior authorized by the Dental Benefits Manager (DBM). Orthodontic services are only covered for individuals under age 21. Effective October 1, 2013, TennCare reimbursement for orthodontic treatment approved and begun before age 21 will end on the individual's 21st birthday. For individuals receiving treatment prior to October 1, 2013, such treatment may continue until completion as long as the enrollee remains eligible for TennCare. Orthodontic treatment is not covered unless it is medically necessary to treat a handicapping malocclusion. Cleft palate, hemifacial microsomia, or mandibulofacial dysostosis shall be	Not covered.~~, except for orthodontic treatment when an orthodontic treatment plan was approved prior to the enrollee's attaining 20 ½ years of age, and treatment was initiated prior to the enrollee's attaining 21 years of age; such treatment may continue as long as the enrollee remains eligible for TennCare.~~

	considered handicapping malocclusions. A TennCare-approved Malocclusion Severity Assessment (MSA) will be conducted to measure the severity of the malocclusion. An MSA score of 28 or higher, as determined by the DBM's dentist reviewer(s), will be used for making orthodontic treatment determinations of medical necessity. However, an MSA score alone cannot be used to deny orthodontic treatment. Orthodontic treatment will not be authorized for cosmetic purposes. Orthodontic treatment will be paid for by TennCare only as long as the individual remains eligible for TennCare. ~~If the orthodontic treatment plan is approved prior to the enrollee's attaining 20 ½ years of age, and treatment is initiated prior to the enrollee's attaining 21 years of age, such treatment may continue as long as the enrollee remains eligible for TennCare.~~ The MCO is responsible for the provision of transportation to and from covered dental services, as well as the medical and anesthesia services related to the covered dental services.	

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 05/08/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/20/13

Rulemaking Hearing(s) Conducted on: (add more dates). 04/24/13

Date: 5/8/2013

Signature:

Name of Officer: Darin J. Gordon

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

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 5/8/13

Notary Public Signature: Cheryl D Kline

My commission expires on: 8/23/16

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

Robert E. Cooper, Jr.
Attorney General and Reporter

7-1-13
Date

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Filed with the Department of State on: 7/1/13

Effective on: 9/29/13

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Standard - Covered Dental Services under TennCare managed care program.
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 71-5-105
EFFECTIVE DATES:	September 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules clarify that effective October 1, 2013, TennCare reimbursement for orthodontic treatment approved and begun before age 21 will end on the individual's 21st birthday. These rules reflect that for individuals receiving treatment prior to October 1, 2013, the treatment may continue until completion as long as the enrollee remains eligible for TennCare Standard. These rules revise the definition of "handicapping malocclusion" for the purpose of determining eligibility for covered dental services.

Public Hearing Comments

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

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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 rules are not anticipated to have an effect on small businesses.

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.

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Rule ID(s): 5506
File Date: 7/1/13
Effective Date: 9/29/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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

Revision Type (check all that apply):

X Amendments
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.01	Definitions
1200-13-14-.04	Covered Services

(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)

Paragraph (56) Handicapping Malocclusion of Rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new Paragraph (56) which shall read as follows:

~~(56) Handicapping Malocclusion, for the purposes of determining eligibility under these regulations shall mean the presence of abnormal dental development that has at least one of the following:~~

~~(a) A medical condition and/or a nutritional deficiency with medical physiological impact, that is documented in the physician progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to medical treatment without orthodontic treatment.~~

~~(b) The presence of a speech pathology, that is documented in speech therapy progress notes that predate the diagnosis and request for orthodontics. The condition must be non-responsive to speech therapy without orthodontic treatment.~~

~~(c) Palatal tissue laceration from a deep impinging overbite where lower incisor teeth contact palatal mucosa. This does not include occasional biting of the cheek.~~

~~Anecdotal information is insufficient to document the presence of a handicapping malocclusion. Anecdotal information is represented by statements that are not supported by professional progress notes that the patient has difficulty with eating, chewing, or speaking. These conditions may be caused by other medical conditions in addition to the misalignment of the teeth.~~

(56) Handicapping Malocclusion shall mean a malocclusion which causes one of the following medical conditions:

(a) A nutritional deficiency that has proven non-responsive to medical treatment without orthodontic treatment. The nutritional deficiency must have been diagnosed by a qualified treating physician and must have been documented in the qualified treating physician's progress notes. The progress notes that document the nutritional deficiency must predate the treating orthodontist's prior authorization request for orthodontics.

(b) A speech pathology that has proven non-responsive to speech therapy without orthodontic treatment. The speech pathology must have been diagnosed by a qualified speech therapist and must have been documented in the qualified speech therapist's progress notes. The progress notes that document the speech pathology must predate the treating orthodontist's prior authorization request for orthodontics.

(c) Laceration of soft tissue caused by a deep impinging overbite. Occasional cheek biting does not constitute laceration of soft tissue. Laceration of the soft tissue must be documented in the treating orthodontist's progress notes and must predate the treating orthodontist's prior authorization request for orthodontics.

Anecdotal information is insufficient to document the presence of a handicapping malocclusion. The presence of a handicapping malocclusion must be supported by the treating professional's progress notes and patient record.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

Part 5. Dental Services of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new Part 5. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER

5. Dental Services [defined at 42 CFR §440.100].	Preventive, diagnostic, and treatment services covered as medically necessary. Dental services under EPSDT~~,~~ ~~including dental screens,~~ are provided in accordance with the state's periodicity schedule as determined after consultation with recognized dental organizations and at other intervals as medically necessary. ~~Orthodontic services must be prior approved and are limited to individuals under age 21 requiring these services for one of the following reasons:~~ ~~(1) because of a handicapping malocclusion or another developmental anomaly or injury resulting in severe misalignment or handicapping malocclusion of teeth. The Salzmann Index will be used to measure the severity of the malocclusion. A Salzmann score of 28 will be used as the threshold value for making orthodontic determinations of medical necessity. In addition, individual consideration will be applied for those unique orthodontic cases that may not be accounted for solely by the Salzmann Index;~~ ~~(2) following repair of an enrollee's cleft palate.~~ Orthodontic services must be prior authorized by the Dental Benefits Manager (DBM). Orthodontic services are only covered for individuals under age 21. Effective October 1, 2013, TennCare reimbursement for orthodontic treatment approved and begun before age 21 will end on the individual's 21st birthday. For individuals receiving treatment prior to October 1, 2013, such treatment may continue until completion as long as the enrollee remains eligible for TennCare. Orthodontic treatment is not covered unless it is medically necessary to treat a handicapping malocclusion. Cleft palate, hemifacial microsomia, or mandibulofacial dysostosis shall be	Not covered.~~, except for orthodontic treatment when an orthodontic treatment plan was approved prior to the enrollee's attaining 20 ½ years of age, and treatment was initiated prior to the enrollee's attaining 21 years of age; such treatment may continue as long as the enrollee remains eligible for TennCare.~~

	considered handicapping malocclusions. A TennCare-approved Malocclusion Severity Assessment (MSA) will be conducted to measure the severity of the malocclusion. An MSA score of 28 or higher, as determined by the DBM's dentist reviewer(s), will be used for making orthodontic treatment determinations of medical necessity. However, an MSA score alone cannot be used to deny orthodontic treatment. Orthodontic treatment will not be authorized for cosmetic purposes. Orthodontic treatment will be paid for by TennCare only as long as the individual remains eligible for TennCare. ~~If the orthodontic treatment plan is approved prior to the enrollee's attaining 20 ½ years of age, and treatment is initiated prior to the enrollee's attaining 21 years of age, such treatment may continue as long as the enrollee remains eligible for TennCare.~~ The MCO is responsible for the provision of transportation to and from covered dental services, as well as the medical and anesthesia services related to the covered dental services.	

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

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I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/20/13

Rulemaking Hearing(s) Conducted on: (add more dates). 04/24/13

Date: 5/8/2013

Signature:

Name of Officer: Darin J. Gordon

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

CHERYL D. KLINE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 5/8/13

Notary Public Signature: Cheryl D Kline

My commission expires on: 8/23/16

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

Robert E. Cooper, Jr.
Attorney General and Reporter

7-1-13
Date

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Filed with the Department of State on: 7/1/13

Effective on: 9/29/13

Tre Hargett
Secretary of State